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नई दिल्ली, शनिवार, अस्तुवर 21, 2000/आश्विन 29, 1922

No. 27]

NEW DELHI, SATURDAY, OCTOBER 21, 2000/ASVINA 29, 1922

इस भाग में बिम्ब पृष्ठ संख्या दी जाती है जिससे कि यह मूल संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 8—उप-खण्ड (iii) PART II—Section 8—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 26 सितम्बर, 2000

आ.अ. 161.—भारत निर्वाचन आयोग 1998 की
निर्वाचन अर्जी संख्या 1 (वी. नारायणास्वामी बनाम
सी.पी. तिरुनावुक्कारासु) में तारीख 18-8-1998 के
मद्रास स्थित उच्च न्यायालय के आदेश को लोक प्रतिनिधित्व
अधिनियम, 1951 (1951 का 43) की धारा 106 के
अनुसरण में इसके द्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/रा.स.-पांडिचेरी/1/98]

आदेश से,

शरन पाल सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 26th September, 2000

O.N. 161.—In pursuance of Section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951), the Election
Commission of India hereby publishes the order of the High
Court of Judicature at Madras dated 18-8-1998 in Election
Petition No. 1 of 1998 (V. Narayanasamy vs. C. P. Thiruna-
vukkarasu).

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORIGINAL JURISDICTION)

Tuesday, the 18th day of August, 1998

CORAM :

The Hon'ble Mr. Justice E. Padmanabhan.

Original Appln. No. 298 of 1998

in

Election Petition No. 1 of 1998

C. P. Thirunavukkarasu.

.. Applicant/Respondent.

Vs.

V. Narayanasamy.

.. Respondent/Election
Petitioner.

Original Application under Order XIV Rule 8 of the Rules of the High Court, Madras, Original Side, 1956, read with Order VI Rule 16 and Order VII Rule-11 of Code of Civil Procedure, praying that this Court be pleased:

- (i) To strike down the Pleadings in Election Petition No. 1 of 1998 in Paragraphs 5 to 11, 13 and 14 and dismiss the Election Petition No. 1 of 1998 holding no triable issue has arisen in the said Election Petition; and
- (ii) To pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

This Original Application coming on for hearing before this Court on Friday the 10th and Friday the 24th days of July, 1998, Monday the 3rd and Tuesday the 4th days of August, 1998; upon reading the Judge's summons and affidavit of the Applicant/Respondent, counter affidavit of the Respondent/Election Petitioner and the Election Petition; upon perusing the documents filed along with the Election Petition and upon hearing the arguments of Mr. V. T. Gopalan, Senior Advocate for Messrs. Mrs. Radha Gopalan S. Gajendran and T. Sasikala, Advocate for Applicant/Respondent and of Mr. R. Subramaniam, Advocate for Respondent/Election Petitioner and having stood over for consideration till this day, the Court made the following:

ORDER

This original application has been taken out by the respondent in the Election Petition under Order XIV Rule 8 of the Madras High Court Original Side Rules read with Order VI, Rule 16 and Order VII, Rule 11 of the Code of Civil Procedure.

2. In this original application the respondent in the election petition has applied to this Court to strike down the paragraphs 5 to 11, 13 and 14 in the election petition No. 1/98 and consequently dismiss the said election petition holding no triable issue arises or survives in the election petition.

3. The factual matrix in the election petition has to be summarised before taking up the application for discussion. The respondent filed Election Petition No. 1/98 under Sections 80 A, 81, 101(b) and (d) of The Representation of People Act, 1951 seeking for a declaration that the election of the respondent as returned candidate to fill one seat in Council of States as elected by the Members of Pondicherry Legislative Assembly in the election held on 3-10-1997 as void and also for a declaration that the election petitioner has been duly elected as Member of Council of States in the said election.

4. As regards the second relief to declare that the petitioner has been duly elected as member of the Council of States in the said election has not been canvassed by the counsel for the petitioner as the election petitioner is very much aware of the limitations of such a prayer.

5. A notification dated 16-9-1997 was issued to fill the seat of member of Council of States to be elected by the Members of the Legislative Assembly of Union Territory of Pondicherry. According to the notification; 23rd September, 1997 is the last date for filing nominations; 24th September, 1997 is the date for scrutiny of nominations; 26th September, 1997 is the last date for withdrawal of nominations; 3rd October, 1997 is the date for poll and 6th October, 1997 is the date before which the election has to be completed. The Secretary, Pondicherry Legislative Assembly was appointed as the Returning Officer in respect of the biennial election, to the Council of States.

6. The petitioner in the election petition who is the respondent in this application will be referred as the 'election petitioner'. The applicant in this original application who is the respondent in the election petition will be referred as the 'returned candidate'.

7. It is not in dispute that total number of voters that is elected members of the Legislative Assembly of Union Territory of Pondicherry on the relevant date was 29 and in all 27 votes were polled. The election petitioner as well as the contesting respondent whose nominations were found to be in order contested in the election. In the election, in favour of the returned candidate Mr. C. P. Thirunavukkarasu, 15 votes were polled while 12 votes were polled in favour of the election petitioner Mr. Narayanasamy. On 3-10-1997, the Returning Officer declared that Mr. C. P. Thirunavukkarasu

has been duly elected to fill the seat in the Council of States and a notification has also been published in the Government Gazette on 7-10-1997. Being aggrieved by the election of Mr. C. P. Thirunavukkarasu, the unsuccessful candidate V. Narayanasamy has instituted the election petition, praying not only to set aside the election of the respondent/returned candidate, but also prayed for a declaration that he has been declared elected.

8. Skeletal facts with respect to the nomination of candidates are also relevant. The returned candidate was proposed by Mr. R. V. Janakiraman, Chief Minister of Union Territory of Pondicherry. For the second set of application, the proposal was by Mr. C. Jeyakumar, Minister Government of Pondicherry. The said nominations were seconded by Mr. N. Kandaswamy, Deputy Speaker and Mr. K. Rajasekaran, Parliamentary Secretary to Chief Minister respectively.

9. The election petitioner has averred that members of the Legislative Assembly belonging to Dravida Munnetra Kachagam, Tamil Manila Congress, Communist Party of India, Pattali Makkal Katchi and Janata Dal as well as one independent M.L.A., were not available at Pondicherry and they were taken out of Pondicherry and were entertained and were brought back to Pondicherry only on 2-10-1997. It has been further alleged that excepting the Ministers Mr. S. P. Sivakumar and Mr. R. Vishwanathan, no other Minister was available at Pondicherry for canvassing. According to the petitioner the Chief Minister Mr. R. V. Janakiraman was acting as agent for the returned candidate, took the M.L.As and kept them at Hotel Ashok, Pondicherry providing all facilities between 25-9-1997 to 27-9-1997 and that the voters were shifted to Mahabalipuram and were entertained in Five Star Hotels. It was also further alleged that Mr. C. Jeyakumar, Minister, Government of Pondicherry was also the agent of the respondent. The said Minister took Mr. M. Kandaswamy, Deputy Speaker and Mr. K. Rajasekaran, Parliamentary Secretary to Chief Minister of Pondicherry, to Goa only with a view to influence them and get their votes polled in favour of the returned candidate. According to the election petitioner the said three persons went by two cars to Goa and stayed in Government Guest House at Goa and the entire expenses for their travel and stay at Goa were met by Government of Pondicherry. It is alleged that the said two M.L.As were entertained at Goa, were induced to cast their votes in favour of the returned candidate. It has been alleged that by taking the voters and keeping them in Star Hotels as well as entertaining by the Ministers, amounts to corrupt practices committed by the agents of the returned candidate to secure their votes.

10. According to the Election Petitioner, acts of corrupt practices fall under 123(1)(B) and (2) of the Representation of The People Act, 1951. It has been further alleged that Mr. C. Jeyakumar and Mr. R. V. Janakiraman, Chief Minister with the consent of the returned candidate committed corrupt practices and hence the election of the returned candidate has to be declared as void. It was further alleged that Mr. R. V. Janakiraman, Chief Minister and Mr. C. Jeyakumar, Minister acted as agents of the returned candidate and the same has materially affected the election result, in so far as the election petitioner is concerned and it has given chance to the returned candidate to succeed. It has been further alleged that Mr. N. Kesavan, M.L.A., acted as agent of the respondent committed corrupt practices by taking the various M.L.As entertained them and brought them back to Pondicherry on the eve of election. It is the further case of the election petitioner that just before the election to the Council of States, Government of Pondicherry announced appointment of Chairman to five of the State owned Corporations, which appeared in the dailies of 26th September, 1997 wherein the electorate, namely members of the Legislative Assembly were tipped for appointment of various State owned Corporations as an inducement to elect the returned candidate. The notifications so issued with respect to appointment of Chairman to five State owned Corporations would amount to exercise of undue influence to secure the votes of M.L.As and particularly the M.L.As whose names have been tipped for appointment of Chairman. The said act would amount to corrupt practices falling under Section 123(1)(B) and (2) of The Representation of the People Act. It has been further pleaded that Mr. P. Kannan, the Minister for Home, Government of Pondicherry is disqualified in terms of Schedule X of The Constitution of India and he had been allowed to

exercise his vote by the Returning Officer and this has affected the result of the election. Further, it has been alleged that the restricted hours of polling notified and conducted would amount to non-compliance with Section 100(1)(d)(iv).

11. The respondent in the election petition has filed a detailed counter contending that he is not guilty of any corrupt practice; that no election agent has been appointed by him as suggested; that neither Mr. R. V. Janakiraman nor Mr. Kannan, nor any other Minister has been appointed as his election agent besides denying all other averments. The respondent in fact denied all the averments contained in the election petition and prayed for dismissal of the election petition. It would be sufficient at this stage to refer to the skeletal pleadings and while taking up the respective contentions put forward in the application, the plea and counter plea of the parties will be referred to in detail. The returned candidate prayed for dismissal of the election petition as the same does not disclose any cause for being tried.

12. This Court after hearing the counsel for either side, framed the following issues in the election petition on 10-7-1998 :—

1. Whether the election of the respondent as Member of Parliament, Rajya Sabha is vitiated by corrupt practices?
2. Whether the election of the respondent as Member of Parliament, Rajya Sabha is vitiated due to corrupt practices under Section 123(1)(B) and (2) and also Section 100(1)(d) of the Representation of the People Act?
3. Whether the acceptance of vote cast by Mr. Kannan is valid?
4. Whether the election procedure is vitiated by non-compliance with Section 56 of the Representation of the People Act, 1951 as duration of election was only four hours?
5. Whether the Election Petition is liable to be dismissed for non compliance of section 83 read with section 123 of the Act?
6. Whether all the material facts necessary to constitute the cause of action and as such a triable issue has been disclosed in respect of corrupt practices alleged in terms of section 83 of the Act?
7. Whether any triable issue arises out of any part of the pleadings of the Election Petition?
8. To what relief the petitioner is entitled to?

13. At that stage, the respondent in the election petition had taken out this original application No. 298 of 1998 seeking to strike out most of the paragraphs in the election petition as they do not disclose a cause of action, that no material particulars have been pleaded and disclosed in respect of the corrupt practices alleged against the returned candidate, that the persons mentioned in the election petition were not the election agents of the returned candidate, that no consent of the returned candidate had been pleaded with respect to the alleged corrupt practices attributed to the two Ministers and entertaining the voters and in the absence of minimal requirement of material particulars in the election petition, paragraphs 5 to 11, 13 and 14 are liable to be struck off and consequently there being no triable issue, the election petition deserves to be dismissed.

14. A counter has been filed to the original application by the election petitioner raising detailed objections. Mr. V. T. Gopalan appearing for the returned candidate who had taken out the original application submitted detailed arguments and prayed for striking off the said paragraphs in the election petition, while Mr. R. Subramanian, the counsel for the election petitioner submitted detailed arguments in reply. The counsel appearing for either side relied upon a number of decisions in support of their respective contentions, which contentions will be considered in detail in this order.

15. A preliminary objection has been raised by Mr. R. Subramanian, the learned counsel appearing for the election petitioner contending that the present original application is not maintainable and that the merits of the entire election petition has to be decided at the trial and the election petition

cannot be dismissed by taking out an original application of this nature. Mr. Subramanian the learned counsel also contended that the application to strike out the paragraphs as taken out by the returned candidate is not maintainable. Though such a contention has been raised by Mr. R. Subramanian, in the light of the settled position of law, the learned counsel made his submissions on merits with respect to the striking off the various paragraphs in the election petition and sought to contend that there are sufficient or more than sufficient materials or particulars and it cannot be said that material particulars have not been pleaded in the election petition and it is not as if there is no cause of action at all been pleaded or disclosed in the election petition.

16. Before taking up the points for consideration with respect to the maintainability of the application, it is relevant to refer to the earliest pronouncement of the Apex Court reported in AIR 1972 SC page 515 (Hardwari Lal V. Kanwal Singh) wherein it has been held thus :—

"Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81 or section 82 or section 117 of the Act. It was emphasized that section 83 did not find place in Section 86. Under section 87 of the Act, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. A suit which does not furnish cause of action can be dismissed."

17. In 1982 Vol. III SCC 487, (Roop Lal Sethi v. Nachhettar Singh Gill), after analysing the earlier case law, the Apex Court held thus :—

"Under Order 6 Rule 5, particulars will be ordered of the material facts on which the party pleading relies for his claim or defence. If a party's pleading is defective he can also seek leave to alter and amend his own defective pleading under Order 6, Rule 17. There is no express rule providing for the consequence of a party failing to deliver particulars required by order of Court, but the decisions are to the effect that either by the order calling for particulars or by a later order the court can direct the claim or defence to be struck out under order 6, rule 16 of the Code

There is distinction between "material facts" and "particulars". The words "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. ... The word "material" in material facts under section 83 of the Act means facts necessary for the purpose of formulating a complete cause of action; and if any one "material" fact is omitted, the statement "or plaint is bad; it is liable to be struck out. The function of 'particulars' is quite different, the use of particulars is intended to meet a further and quite separate requirement of pleading imposed in fairness and justice to the returned candidate. Their function is to fill in the picture of the election petitioner's cause of action with information sufficiently detailed to put the returned candidate on his guard as to the case he has to meet and to enable him to prepare for trial in a case where his election is challenged on the ground of any corrupt practice. ... Sub Section (1) of section 87 of the Act enact that the trial of an election petition shall be, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits, subject to the provisions of the Act and of any rules made thereunder. There are no express provisions in the Act or in the rules made thereunder as contemplated under sub-section (1) of section 87 of the Act to deal with the situation like the present. The provisions of the Code accordingly must apply in such a case as provided by sub-section (1) of section 87 of the Act. That being so, the provisions of Order 6 which are integral

part of the Code come into play except to the extent modified by sub section (5) of section 86 of the Act."

18. The very same pronouncements have been followed subsequently in 1986 Supp. SCC 315 and 1987 Supp. SCC 663 and in AIR 1994 SC 2277.

In AIR 1994 SC 2277, (Subash Desai V. Sharad, J. Rao), the Apex Court after referring to Azhar Hussai V. Rajiv Gandhi (1986 2 SCR 782) held thus :—

"Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by section 81; or whether has been non-compliance of section 82 i.e., non-joinder of the necessary parties to the election petition; or for non-compliance of section 117 i.e., non deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirements of section 83 of the Act. But section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices are set forth "properly in the election petition, the person whose election is challenged is bound to be prejudiced in defending himself of the charges, which have been levelled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice cannot take liberty of making any vague or reckless allegations, without taking the responsibility about the correctness thereof. Before the Court proceeds to investigate such allegations, the Court must be satisfied, that the material facts have been stated all with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the Court finds that neither material facts have been stated, nor full particulars of the corrupt practice as required by section 83 have been furnished in the election petition, the election petition can be dismissed, not under section 86, but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not disclose a cause of action. This aspect has been examined by this Court in detail in the cases of Azhar Hussai V. Rajiv Gandhi, (1986) 2 SCR 782; (AIR 1986 SC 1253); Hardwari Lal V. Kanwal Singh, (1972) 2 SCR 742; (AIR 1972 SC 515)."

19. Identical view has been taken by Janarthanam, J. in O.A. Nos. 36 and 186 of 1997 in E.P. No. 3 of 1996 dated 16-5-1997. In view of the above pronouncements, the original application taken by the returned candidate is maintainable and the same has to be decided on merits. The objections raised by Mr. R. Subramanian, learned counsel for the election petitioner as to maintainability cannot be sustained in law.

20. It has been repeatedly laid down by their Lordships of the Supreme Court by a catena of decisions that an election could be challenged as provided in Section 80 of the Representation of the People Act on the grounds set out in Section 100 of the Act. In terms of Section 83, which is mandatory, the election petition shall contain a concise statement of material facts and the petitioner shall set forth full particulars of corrupt practice.

21. Section 83 of the Act regulates the pleadings and the said provision makes it obligatory on the election petitioner to furnish the requisite facts, details and particulars of each corrupt practice with exactitude. If the petitioner fails to make a ground under Section 100 of the Representation of the

People Act, such a petition has to fail at the very threshold.

22. It has also been repeatedly held by their Lordships of the Supreme Court that the allegations of corrupt practice are in the nature of criminal charges and there should be no vagueness in the allegations so that the returned candidate may know the details of full impact of what he has to face in the trial. Where the allegations are vague, general and on the whole, where the material facts are not set out in the pleadings, there is no purpose in proceeding with the trial of election petition. In such a case, the election petition has to fail for want of cause of action.

23. In Laxmi Narayan Nayak Vs. Ramratan Chatarvedi and others [1990 (2) SCC 173] S. Ratnavel Pandian, J. speaking for the Bench after analysing the case law held thus :—

"This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being :

- (1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide Dhartiipakar Madan Lal Agarwal V. Rajiv Gandhi (1987 Supp. SCC 93) and Kona Prabhakara Rao V. M. Seshagiri Rao (1982(1) SCC 442.
- (2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide Manphul Singh V. Surinder Singh (1973 (2) SCC 599), Kona Prabhakara Rao V. M. Seshagiri Rao (1982 (1) SCC 442) and Dhartiipakar Madan Lal Agarwal V. Rajiv Gandhi (1987 Supp. SCC 93)."

In the circumstances, this Court holds that this original application filed by the returned candidate is maintainable and it has to be decided on merits.

24. Before taking up the paragraphs with respect to which striking off has been prayed for, it is essential to refer to Section 81, 83 and 86 of the Representation of the People Act, 1951 and also refer to atleast few of the pronouncements of the Apex Court, where it has been emphasised that pleadings in an Election petition have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action, it is liable to be rejected in limine.

25. In this respect, in Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajiv Gandhi (1986 (4) SCC 78), the Apex Court held that in election petitions pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action, it could be rejected in limine. If on going through all the grounds mentioned in the petition and if they are so frivolous and vexatious, the petition could be rejected at the threshold.

26. In Samant N. Balakrishna V. George Fernandez and others (AIR 1969 SC 1201) their Lordships of the Supreme Court, while considering Sections 81, 83 and 86 of the Representation of the People Act held that the said provisions are mandatory and the entire and complete cause of action must be set out in the petition, in the share of material facts. In that context the Apex Court held thus :—

"Having dealt with the substantive law on the subject of election petitions we may now turn to the procedural provisions in the Representation of the People Act. Here, we have to consider Ss. 81, 83 and 86 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-sec. (1) of S. 100 and S. 101. That as we have shown above creates the substantive right. Section 83 then provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt

practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus the material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the "efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plant without disclosing a proper cause of action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action, where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions, which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. This distinction is brought out by the provisions of Section 86 although the penalty of dismissal is taken away. Sub-section (5) of that section provides:—

26. In *Shri Udhav Singh Vs. Madhav Rao Scindia* (1977 (1) SCC 511, Sarkaria, J. speaking for the Bench held thus :—

"Like the Code of Civil Procedure, this section also envisages a distinction between 'material facts' and 'material particulars'. Clause (a) of sub-section (1) corresponds to Order 6, Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a

discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

"All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are 'material facts'. In the context of a charge of corrupt practice, 'material facts' would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short all those facts, which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1)(a).

"Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of Section 83(1) would therefore, mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). "Particulars serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative."

27. In *Ashwani Kumar Sharma Vs. Yaduvansh Singh and Others* (AIR 1998 SC 337) their Lordships after referring to *Udhav Singh V. Madhav Rao Scindia* (1977 (1) SCC 511) thus reiterated :—

"However, evidence in support of the pleas which have been taken or facts which have been pleaded, cannot be confused with the concise statement of material facts which an election petition is required to set out under Section 83(1)(a). In the case of *Udhav Singh V. Madhav Rao Scindia*, (1977 (1) SCC 511 : (AIR 1976 SC 744), this Court made a distinction between material facts and material particulars. The Court said that this distinction was important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact would lead to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off. But if material particulars are lacking, they may be supplied at a later date. Respondent No. 1 relies upon this distinction in support of his plea that the election petition is liable to be dismissed for non-disclosure of material facts. The election petition, however, is required to contain a concise statement of material facts, this being equivalent to a cause of action. The entire evidence in support of such material facts is not required to be set out. From the contents of the election petition, it is not possible to hold that a concise statement of material facts is not to be found in the petition. In the case of *Arun Kumar Bose V. Mohd. Furkan Ansari*, AIR 1983 SC 1311 at page 1314, this Court distinguished the provision of Section 83(1)(a) from 83(1)(b). "The scheme in Section 83(1) of the Act makes the position clear. Clause (a) refers to general allegations and requires a concise statement of material facts to be furnished, while clause (b) referring to corrupt practice requires all details to be given".

28. Before taking up the paragraphs for consideration, it is also essential to refer to one more aspect of the pleadings. As has been pointed out by their Lordships of the Apex Court in *Samant N. Balakrishna V. George Fernandez and others* (AIR 1969 SC 1201) : (1969(3) SCC 238) that the election petition must set out a ground or charge or the kind of corrupt practice with material facts on which a charge can be made out and mere repetition of the words of the statute does not amount to a proper statement of facts. In this respect the Apex Court held thus :—

"It would appear from this that to make out a complete charge the facts necessary must be included in relation to a ground as stated in the Act. Merely,

repeating the words of the statute is not sufficient. The petitioner must specify the ground i.e., to say the nature of the corrupt practice and the facts necessary to make out a charge. Although it has been said that the charge of corrupt practice is in the nature of quasi criminal charge, the trial of an election petition follows the procedure for the trial of a civil suit. The charge which is included in the petition must, therefore, specify the material facts of which the truth must be established. This is how the case was understood in numerous other cases, some of which we have already referred. In particular see. *J. Devaiab V. Nagappa and Others*, 1965 Mys 102; *Babulal Sharma V. Brijanarain Brajesh and Others* 1958 Madh Pra 176 F.B.

From our examination of all the cases that were cited before us, we are satisfied that an election petition must set out a ground or charge. In other words, the kind of corrupt practice which was perpetrated together with material facts on which a charge can be made out must be stated. It is obvious that merely repeating the words of the statute does not amount to a proper statement of facts and the section requires that material facts of corrupt practices must be stated."

29. The paragraphs of the election petition with respect to which the Original Application has been taken out to strike off has to be considered in the light of the above pronouncements of the Apex Court.

30. Before taking up the earlier paragraphs for consideration, it would be proper to consider the request to strike off paragraphs 13 and 14 of the election petition.

30(a) In para 13 of the election petition, it has been averred by the election petitioner that Mr. P. Kannan, Minister for Home, Government of Pondicherry is disqualified in terms of Schedule X of the Constitution as he had joined Tamil Monila Congress after elections event though he contested and returned candidate as an independent candidate. According to the election petitioner, the said Mr. P. Kannan is disqualified to cast his vote as he had lost his membership to the Pondicherry Legislative Assembly as a result of defection.

31. The petitioner has also submitted that W.P. No. 14373 of 1997 is pending on the file of this Court, wherein the decision of the Speaker holding that the said Mr. Kannan has not incurred the disqualification is in challenge and the W.P. is still pending. It is fairly admitted by Mr. R. Subramanian, learned counsel for the election petitioner that Speaker of the Pondicherry Legislative Assembly who is the competent authority had considered as to whether the said Mr. P. Kannan, Member of Legislative Assembly, who had been elected as an independent member in the 'Cycle' Symbol has incurred the disqualification under the Tenth Schedule to the Constitution of India as incorporated in the Government of Union Territories Act, 1963 as amended by the Government of Union Territories (Amendment) Act, 1985.

32. Mr R. Subramanian, learned counsel for the election petitioner fairly admitted that the Speaker of the Legislative Assembly, Pondicherry by a decision dated 21st May, 1997 held that the said Mr. Kannan had not incurred any disqualification under the Tenth Schedule to the Constitution read with provisions of the Members of the Pondicherry Legislative Assembly (Disqualification on grounds of Defection) Rules 1986.

33. The Speaker of the Legislative Assembly is the competent authority to decide the disqualification, besides, the issue as to whether an elected candidate has incurred the disqualification in terms of Tenth Schedule to the Constitution. It is true that the decision of the Speaker is under challenge and the Writ Petition is pending. As such on the date of election, even as per the decision of the Hon'ble Speaker, the said Mr. Kannan had not incurred the disqualification and he is entitled to cast his vote in the election to Rajya Sabha.

34. The said decision of the Speaker could be challenged only under Article 226 of the Constitution. As already set out above, the Speaker of the Legislative Assembly had held by passing a detailed order that the said Kannan has not incurred the disqualification on ground of alleged defection after his election and it has been further held that paragraph

2 of the Tenth Schedule to the Constitution has no application. It is to be stated that the Writ petition challenging the said decision is pending, which is of little consequence. On the facts of the present case, as it has been held that the said Mr. Kannan had not incurred the disqualification, this Court holds that he is entitled to cast his vote.

35. It is not the case of Mr. R. Subramanian that the Speaker of the Legislative Assembly had declared that Mr. Kannan had incurred disqualification in terms of provisions of para 2 of the Tenth Schedule to The Constitution. There is no dispute. Nor it could be contended by Mr. R. Subramanian that Mr. Kannan is not qualified either to continue as a member of the Assembly or to exercise his vote, in the election to Council of State Constituency. The only ground set out in para 13 of the affidavit in this respect on the admitted facts has to be struck off as it does not disclose a cause or a trible issue. Accordingly, paragraph 13 of the Election Petition is ordered to be struck off.

36. In para 14, it has been pleaded that in respect of election under challenge, the poll has to take place between 10 AM to 2 PM, as per notification dated 16-9-1997, that in terms of Section 56 of the Representation of the People Act 1951, the total period allotted on any one day of polling at an election in a Parliamentary Constituency shall not be less than 8 hours, and that as only four hours was prescribed in the notification there is non-compliance with the provisions of The Representation of People Act and in particular to Section 100(1)(d)(iv) and the election of the returned candidate has to be declared as void.

37. In this respect Mr. R. Subramanian, learned counsel for the petitioner drew the attention of the Court with respect of the statutory provisions and reiterated that the said contravention of the statutory provision with respect to polling hours has materially affected the result of the election. Though Mr. R. Subramanian had half-heartedly raise such a plea in paragraph 14 of the Election Petition, this Court has to consider as to whether paragraph 14 of the Election deserves to be struck off.

38. It is relevant to refer to the statutory provisions. Section 56 of the Act provides that the Election Commission shall fix the hours during which the poll will be conducted and the hours so fixed shall be published in such a manner as may be prescribed. The proviso to Section 56 provides that the total period allotted on any one day for polling at an election in a Parliamentary Constituency or Legislative Assembly shall not be less than eight hours. Only on the basis of Section 56, it is sought to be made out that the four hours time notified in respect of an election under challenge, is being contended as one violative of Sec. 56 of The Representation of People Act, 1951 and the election it is contended has to be set aside for non-compliance of Section 100(1)(d)(iv). The election in question is an election to the Council of States by the members of the Pondicherry Legislative Assembly. It is not indispute that Rule 69 of the Conduct of Election Rules, 1961 is the relevant rule. Rule 69 of the Conduct of Election Rules, 1961 reads thus:—

"69 Notice to electors at election by assembly members:—At an election by assembly members where a poll becomes necessary, the returning officer for such election shall, as soon as may be after the last date for the withdrawal of candidate send to each elector a notice informing him of the date, time and place fixed for polling."

39. It is not in dispute that as per the notification issued by the Election Commission, the poll hours have been fixed from 10 AM to 2 PM as the hours during which a poll shall, if necessary be taken at the quinquennial election to the Council of States from the Union Territory of Pondicherry. Rule 69 applies with respect to the election in question and not Section 56 of the Representation of People Act, 1951.

40. The Election Commission had fixed the hours during which the poll in question to be conducted, if required. It is not necessary to refer to the definition section as the election in question falls within Rule 69 of the Conduct of Election Rules, 1961. It is open to the Election Commission to fix the hours. It is not in dispute that for all elections to the Council of States, even in other states, identical time has been fixed. In the present case, the total

number of votes to be polled being 29 and the members had been given four hours voting time between 10.00 a.m. and 2.00 p.m. As such on the facts it has to be held that there has been no contravention of the statutory provision nor it could be stated that section 56 of the Representation of the People Act, 1951 applies to the election in question nor it could be held that Section 100 (1)(d)(iv) is attracted, nor it could be held that the result of the election in so far as it concerns with the returned candidate has been materially affected on the facts as pleaded in para 14 of the Election Petition.

41. Even accepting the facts set out in para 14 of the Election Petition, in view of the statutory provisions the plea set out in para 13 being a mis-conception of law, entire paragraph 14 has to be struck off and it is accordingly ordered to be struck off as no triable issue arises.

42. As regards the paragraph 15 of the Election Petition, as rightly pointed out by the learned counsel for the returned candidate, it also deserves to be struck off as even if the election of the returned candidate is being declared void or the election is set aside, the election petitioner will not be entitled to the relief namely the election petitioner to be declared as elected to fill one seat in the Council of States.

43. Admittedly, out of total votes of 29, 27 votes were polled and 15 votes were polled in favour of the returned candidate while 12 votes have been polled in favour of the election petitioner. Even if the election is to be set aside on any one of the grounds set out in the election petition or on the facts of the case, the same will not entail the election petitioner to secure the relief of declaration that he has been elected to the seat in question.

44. On the very averments set out in the Election Petition, the Election Petitioner cannot invoke Section 101 of the Representation of People Act, 1951, as it cannot be held that the election petitioner has secured majority of the valid votes, not it has been pleaded that but for the votes obtained by the returned candidate by corrupt practice or by such other persons, he would have obtained a majority of valid votes. Admittedly, the returned candidate had secured two votes more than the election petitioner and as such on the facts, the election petitioner cannot seek for a declaration that he has been declared as elected. Hence para 15 deserves to be struck off.

45. No cause of action has been pleaded not triable issue is found in para 15 in this respect. Even accepting the entire averments set out in paragraph 15, the petitioner will not be entitled to such a relief. As such paragraph 15 of the election petition and relief (b) prayed for by the election petitioner are ordered to be struck off.

46. In the paragraphs 3 and 4, the election petitioner had merely set out details of notification, the date on which the poll was conducted and the total number of votes polled in favour of the returned candidate as well as the petitioner. There is no controversy with respect to the averments set out in the said paragraphs. So also paragraphs 5 and 6. The election petitioner fairly stated that paragraphs 3, 4 and 5 are only introduction to the election petition or a prelude, where averments relating to the notification, conduct of poll and election results have been narrated. Therefore, the said paragraphs need not be considered as they are neither matters in controversy nor in issue.

47. Paragraphs 6 to 12 with respect to which there has been serious contest, have to be taken up for consideration. Paragraph 6 of the Election Petition reads thus:—

"The petitioner submits that the respondent being candidate of Dravida Munnetra Kazhagam was proposed by the Chief Minister Mr. R. V. Janakiraman. For the 2nd set of application, the name of the Respondent was proposed by Theni C. Jayakumar, Minister, Government of Pondicherry. The above proposals were seconded by Mr. M. Kandasamy, Deputy Speaker and Mr. K. Rajasegaran, Parliamentary Secretary to Chief Minister. All the above four acted as agent of the Respondent in the election."

48. It is not in controversy that one of the nominations proposing the returned candidate has been signed by Mr. R. V. Janakiraman, Chief Minister, who belong to Dravida Munnetra Kazhagam. In the second set of nomination filed by the

returned candidate, his name has been proposed by Theni C. Jayakumar, Minister, Government of Pondicherry. The nominations have been respectively seconded by Mr. M. Kandasamy, Deputy Speaker and Mr. K. Rajasegaran, Parliamentary Secretary to Chief Minister.

49. Thus for there is no dispute and the above facts are found on records nor it is a matter of controversy nor it is a matter a bone of contention. The last line of paragraph 6, which reads thus "All the above four acted as Agent of the Respondent in the election" is the only controversy. It is to be pointed out that the returned candidate had not appointed either Mr. R. V. Janakiraman, or Theni C. Jayakumar, or Mr. M. Kandasamy or Mr. K. Rajasegaran as his election agent or polling or counting agent/agents.

50. It is admitted that the returned candidate had not appointed an election agent at all for the election in question. Mr. R. Subramanian, learned counsel for the election petitioner vehemently contended that all the above four persons acted as agents of the returned candidate in the election. As already pointed out that admittedly the returned candidate had not appointed any one of them as his agents in the election, nor they were appointed as the polling agents in the election for or by the returned candidate. Merely because the said persons have either proposed or seconded the returned candidate, it cannot be inferred nor it could be suggested that they are the agent or agents of the returned candidate.

51. In the absence of any specific plea that the returned candidate had appointed the four persons as his election agents or with the consent of the returned candidate, the said four persons have acted as his election agents, such a consent being either implicit or explicit, the last sentence in paragraph 6 of the Election Petition not disclosing any cause of action also is ordered to be struck off.

52. No material facts have been set out in para 6 or for that matter in the entirety of the election petition it has been pleaded as to how the four persons could be regarded as agents of the returned candidate. No particulars of the agency has been pleaded nor disclosed. As already pointed out, no election agent has been appointed by the returned candidate in terms of Section 45 of the Act. As such, the last line in paragraph 6 of the election petition also deserves to be struck off as it does not disclose any cause of action nor it could even be stated that the said four persons have acted with the consent of the returned candidate either in para 6 of anywhere in the election petition. As to who is or could be the agent and as to which are the acts of the agent binding on the returned candidate will be considered in detail, while taking up paras 7 and 8 of the election petition.

53. It is suffice to add that consent of agent cannot be implied in an election nor leaders of the political parties could be held to be an agent of the returned candidate as no such relation could even be thought of between the leaders of the party and the returned candidate.

54. In this respect, the learned counsel for the returned candidate rightly placed reliance on the decision of the Apex Court reported in Chandrakanta Goyal Vs. Sohan Singh Jodh Singh Kohli [1996(1)SCC 378] wherein J. S. Verma, J. speaking for the Bench held thus:—

"As an abstract proposition of law it cannot be held that every speech by a leader of political party, who is not an agent of the candidate set up by the party, is necessarily with the consent of the candidate set up by that party to make it superfluous to plead and prove the candidate's consent, if that speech otherwise satisfies the remaining constituent parts of a corrupt practice. The act amounting to a corrupt practice must be done by "a candidate or his agent or by any other person with the consent of a candidate or his election agent". A leader of a political party is not necessarily an agent of every candidate of that party. An agent is ordinarily a person authorised by a candidate to act on his behalf on a general authority conferred on him by the candidate. Ordinarily, the agent is the understudy of the candidate and has to act under the instructions given to him, being under his control. The position of a leader is different and he does not act under instructions of a candidate nor is he under his control. The candidate is held to be bound by acts

of his agent because of the authority given by the candidate to perform the act on his behalf. There is no such relationship between the candidate and the leader, in the abstract merely because he is a leader of that party. For this reason, consent of the candidate or his election agent is necessary when the act is done by any other person. (emphasis supplied). Thus, even in the case of a leader of the party, ordinarily, consent of the candidate or his election agent is to be pleaded and proved, if the election of the candidate is to be declared void under Section 100(1)(b) for the corrupt practice committed by the leader. It is a different matter that the consent may be implied more readily from circumstances such as conduct of the candidate evident from his personal presence at that time and place without any protest. On this scanty material and a half-hearted presumption of consent drawn only from the fact that the speeches were made by leaders of the party, which is a constituent part of the corrupt practice and the further fact that the Legislative Assembly for which that election was held has been dissolved and the next general election thereto has also taken place a remand in the present case is uncalled for."

55. Neither in paragraph 6 nor in subsequent paragraphs, namely 7 to 12, there had been any plea that the said four persons were the agents of the returned candidate either implicit of explicit nor the consent of the returned candidate had been pleaded in those paragraphs.

56. In *Ram Singh and Others V. Col. Ram Singh* (AIR 1986 SC 3), Fazal Ali, J., speaking for the majority held thus :—

"It manifestly follows that once it is proved that the respondent was not present at the time of the incidents at Kalaka and Burthal, the case of the appellants fails like a pack of cards because it is well settled by several authorities of this Court that the corrupt practice must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. Where, however, the supporters of a candidate indulge in a corrupt practice on their own without having been authorised by the candidate or his polling agent, the election of the returned candidate cannot be voided. We might mention here that the last factor indicated by us is conspicuously absent in this case taking ex-facie the entire facts narrated by the appellants in their pleadings or in the evidence."

57. In *Surinder Singh Vs. Hardial Singh and Others* [1985 (1) SCC 91] while considering the plea relating to corrupt practice by the returned candidate and his agents, it has been held that the consent of the candidate has to be pleaded specifically and in the absence of consent and in the absence of any pleading as to agency of a candidate either implicit or explicit, the last line of paragraph 6 and material portions of paragraphs 7 and 8 also suffer with the same inherent defect. Hence it has to be held that no cause of action is disclosed or survives or arises for being tried on the pleadings set out in the said paragraphs of the election petition.

58. It is admitted that the said four persons have not been appointed as election agent of the returned candidate, nor there is any plea that the said four persons have committed corrupt practices either with the consent of the returned candidate or that of his election agent. There has been no plea at all in this election petition that the said four persons with the consent of the returned candidate have acted as his agent nor there has been a plea that the said four persons have committed corrupt practices with the consent of the returned candidate either implicit or explicit. In the absence of such plea, no amount of evidence could be let in with respect to the averments set out in paragraphs 7 or 8 or 9 of the election petition.

59. In the present case the consent of the returned candidate or his election agent which is a constituent part of the corrupt practice and an ingredient of the ground under Section 100(1)(b) had not been pleaded in the election petition and on that basis the learned Senior Counsel appearing for the returned candidate contends that the entire pleadings in the election petition regarding corrupt practices as well have to

be ignored and there is no triable issue of corrupt practice arises to bind the returned candidate. It is also pointed out by the learned Senior Counsel that the averments set out in the paragraphs 7 and 13 are too general and vague, besides they are deficient in requisite pleadings of all the constituent parts of the corrupt practice. It is also contended that the averments themselves do not constitute a pleading of the full cause of action and therefore they have to be ignored and struck off in accordance with the Order VI Rule 16 of Civil Procedure Code.

60. As already pointed out, consent of the returned candidate or his agent is the minimum requisite, which had not been pleaded and there cannot be an implied consent so as to render the election of the returned candidate void.

61. The learned counsel rightly relied upon the decision reported in 1996(1) SCC 169 (*Manohar Joshi v. Nitin Bhaurao Patil*, where Their Lordships of the Apex Court held thus :—

"Apart from this aspect, it has also to be remembered that provision is made in the R.P. Act as well as in the general law to punish the makers of such incendiary speeches for the offences committed by them in the form of electoral offences e.g., under section 125 of the R.P. Act and sections 153-A, 153-B and 295-A of the Indian Penal Code. Thus even if the acknowledged leaders of a party have committed any corrupt practice which results in benefit to the returned candidate, then on proof of the benefit having materially affected the election result in favour of the candidate, his election would be set aside on the ground under section 100(1)(d)(ii) of the R. P. Act. There is thus no occasion to read into the ground in section 100(1)(b) or the definition of 'corrupt practice' the implied consent of the candidate for any act done by a leader of that party to dispense with a clear pleading and proof of the candidate's or his election agents consent as a constituent part of the corrupt practice for the ground under Section 100(1)(b) of the R.P. Act.

It may also be mentioned that the proposition suggested in the argument of Shri Desai does not appear to be correct. Whenever the requirement is of consent, it must be free consent given by the giver of the consent, of his own volition. Ordinarily, it also implies a subservient role of the person to whom consent is given and the authority of the giver of the consent to control the actions of the agent. It is difficult to ascribe to an acknowledged leader of the party a rôle subservient to the candidate set up by that party inasmuch as the candidate is ordinarily in no position to control the actions of his leader. However, if even without giving his consent, the candidate has received benefit from the leader's act in a manner which materially affects his election favourably, on pleading and proof of such material effect on the election candidate's election is liable to be set aside on the ground under section 100(1)(d)(ii) unless, as provided in sub-section (2) of Section 100 he further discharges the onus placed upon him that in spite of his opposition and taking due precautions that act had been committed for which he cannot be responsible. . .

We have no doubt that the requisite consent of the returned candidate or his election agent which is a constituent part of the corrupt practices under sub-sections (3) and (3-A) of Section 123, and an ingredient of the ground under Sections 100(1)(b), has nowhere been pleaded in the election."

62. Mr. R. Subramanian, the learned counsel for the election petitioner also drew the attention of the Court to the same decision namely *Manohar Joshi v. Nitin Bhaurao Patil* and contended that if corrupt practice is committed in the interest of the returned candidate by any other persons even if he be an agent other than his election agent, without the consent of the returned candidate or his election agent, the law provides that the election to be declared as void under Section 100(1)(d)(ii) provided, it is pleaded and proved that the result of the election of the returned candidate has been materially affected thereby. This is not the case here,

63. In paragraph 7 of the election petition it has been pleaded that M.L.As were taken out of Pondicherry and were entertained and were brought back to Pondicherry only on 2-10-1997, which is the main charge in first part of paragraph 7. In the second part of the said paragraph, it has been averred that only two Ministers were available in Pondicherry during the relevant point of time and that Mr. R. V. Janakiraman, Chief Minister took the M.L.As and kept them at Hotel Ashok, Pondicherry providing all facilities to them from 25-9-1997 to 27-9-1997. It has been further averred that the M.L.As were thereafter shifted to Mahabalipuram and entertained in Five Star Hotels.

64. As seen from paragraph 7, except making vague or general averments, the entire averments in paragraph 7 will not satisfy the requisite averment which would constitute a corrupt practice. It has to be pointed out that except stating that M.L.As belonging to Dravida Munnetra Kazhagam, Tamil Manila Congress, Communist Party of India, Pattali Makkal Katchi, Janatha Dal and one independent M.L.A., were not available, it has not been averred that who are the M.L.As by name, who were taken out of Pondicherry, who had taken them and who had entertained them are absent. No material particulars have been set out in paragraph 7 with respect to the number and name of the voters of M.L.As who had been taken out of Pondicherry, the dates and time, when and where they were entertained and by whom after all absent and it is not even pleaded as to which of the Hotels or Five Star Hotels where the M.L.As were entertained. Further, consent of the petitioner either implicit or explicit have not even been averred. It has not been stated in this para that Mr. R. V. Janakiraman was or acted as the election agent. It has not been pleaded that the M.L.As were taken out by the returned candidate or his agent or by a named person with the consent of the returned candidate or his agent. The absence of such plea with material particulars is fatal and as held by the Apex Court in the above cited reference reported in 1996 (1) SCC 169, there is no plea of corrupt practice which raise a triable issue and the averments are deficient in requisite pleadings of all the constituent parts of corrupt practice and they do not constitute a pleading of the full cause of action and therefore they have to be ignored. In other words, no triable issue arises.

65. Even in the later part of paragraph 7 what has been alleged is that Mr. R. V. Janakiraman the Chief Minister was acting as agent of the respondent, took the M.L.As and kept them at Hotel Ashok, Pondicherry, providing all facilities to them from 25-9-1997 to 29-7-1997. It is to be pointed out that even according to the petitioner Mr. R. V. Janakiraman was not an election agent of the returned candidate. Nor it could be assumed that he was acting as agent of the returned candidate. Further, it has to be pointed out that who are the M.L.As, either by name or by some identification who have been taken to Hotel Ashok, Pondicherry and provided with the facilities are also absent and not been pleaded. These averments are not only vague but also bereft of requisite details of particulars which would form the basis of a triable issue.

66. The election petitioner had very much relied upon the complaint sent by him in para 7 of the election petition. The material portion of the complaint sent to the Election Commissioner is extracted for immediate reference :—

"I am a candidate for Election to the Council of States, Pondicherry Union Territory. I have been canvassing votes from the M.L.As. Some of the DMK and other M.L.As were not available in Pondicherry. When I enquired, I came to know that Mr. C. P. Thirunavukkarasu and the Chief Minister Shri R. V. Janakiraman, took the D.M.K. M.L.As and T.M.C. M.L.As and others and kept them in Hotel Ashok, Pondicherry providing all facilities to them from 25th September, 1997 till 27th September, 1997. Thereafter, they were shifted to Mahabalipuram and put in Five Star Hotel. They have not returned to Pondicherry so far. Further they also were taken to Goa. The act of the Chief Minister, Pondicherry in luring the M.L.As spending huge money would amount to bribery and it will vitiate true and fair elections. The election is on 3-10-1997."

67. Even as seen from the complaint it has not been stated that Mr. R. V. Janakiraman was the agent of the contesting respondent or with his consent the said Mr. R. V. Janakiraman has taken the M.L.As. The complaint also is silent about the names of M.L.As or other details of M.L.As who had been taken to Hotel Ashok, Pondicherry and subsequently to Mahabalipuram or to Goa. It has been that the act of the Chief Minister, Pondicherry in luring the M.L.As by spending huge money would amount to bribery and it will vitiate free and fair elections.

68. Even considering the said Document No. 5 B relied upon by the election petitioner, as part of the pleading it is obvious that the very same deficiencies continue to exist. It has not been pleaded either in paragraph 7 or in the complaint referred to therein as to who are the M.L.As who had been taken to or from Hotel Ashok to Mahabalipuram, on which date, by which vehicle or person, by whom and who entertained them, where they were entertained, the date and time of entertainment or nature of it are not at all set out. Nor it could be supplied at this stage. In the absence of these materials or particulars or averments which would constitute a corrupt practice which is sought to be made out, and the requisite averments being absent, trial if any held, would result in the election petitioner bring in the names for first time and other constituent details or particulars or nature or place of entertainment, which would be nothing but an embellishment. The minimum or requisite materials required for proving the corrupt practices are absent and not to speak of the essentiality i.e., proof as strictly as a criminal charge.

69. In AIR 1984 SC 1161 (MAN MOHAN KALIA V. SHRI YASH AND OTHERS) which has already been referred to, it has been held that an allegation of corrupt practice must be proved directly as a criminal charge. To prove the above strictly as a criminal charge as already pointed out, the material which constitute the corrupt practice not having been pleaded, there cannot be any justification for evidence being let in to prove the general and vague averments set out in the said paragraphs, nor it is permissible in law. The material particulars being absent and not having been pleaded or set out in paragraph 7, this Court holds that the entire paragraph 7 including the averment that Mr. R. V. Janakiraman agent of the returned candidate also has to be struck off as no triable issue would arise. All the averments being general and vague, deficient in requisite pleading of all the constituent parts of the corrupt practice, it will not constitute a pleading of full cause of action and therefore they have to be ignored.

70. Mr. R. Subramanian, the learned counsel for the election petitioner sought to contend that there are sufficient material facts and particulars, which are essential in the election petition. Mr. R. Subramanian, relied upon the decision, in AIR 1986 SC 1253 (ASHAR HUSSAIN Vs. RAJIV GANDHI) and AIR 1998 SC 337 (ASHWANI KUMAR SHARMA Vs. YADUVANSH SINGH AND OTHERS). The said judgments relied upon, do not support the contention of the learned counsel for the election petitioner. Lack of material particulars in respect of corrupt practice set out in paragraph 7 is fatal and hence there is no cause to be tried in respect of the averments set out in paragraph 7 of the election petition.

71. In fact, in AIR 1986 SC 1253 (ASHAR HUSSAIN V. RAJIV GANDHI) it has been held that when the pleadings are vague, the material particulars have not been pleaded, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. No material facts and particulars have been furnished or set out in the election petition to lead evidence and to substantiate the charge of corrupt practice in paragraph 7.

72. In 1987 Supp. SCC 93 (DHARTIPAKAR MADAN LAL AGARWAL V. RAJIV GANDHI), it has been held that pleadings in the election petition should be strictly examined and vague pleadings are fatal to the election petition. Their Lordships of the Apex Court held thus :—

"The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question

except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, "Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the pleadings and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the pleadings or the election petition finds that it does not disclose any cause of action, it would be justified in striking out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. "If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11."

This pronouncement squarely apply to para 7 as well as the subsequent paragraphs of the election petition as well.

73. The distinction between requisite material particulars which are required to be pleaded shall not be confused with the concise statement of material facts. Though Mr. R. Subramanian, learned counsel for the returned candidate relied upon AIR 1998 SC page 337, on the very pleadings in the present election petition as already pointed out, the petitioner has neither pleaded material facts or material particulars or the requisite pleadings which would make out the corrupt practice which are required to be established as in the nature of a criminal charge.

74. In paragraph 8 of the election petition, as rightly contended by the learned senior counsel for the returned candidate, the averments are vague and general, besides material facts and material particulars are absent. It can neither be supplied nor improved at the stage of trial.

75. In paragraph 6 of the election petition curiously the petitioner has pleaded that Mr. C. Javakumar Minister Government of Pondicherry, Mr. K. Kandaswamy, Deputy Speaker and Mr. K. Rajasekaran and Mr. R. Janakiraman acted as agent of the returned candidate. Excluding the name of Mr. Janakiraman, the names which finds place in paragraph 8 being the very same Jeyakumar, Mr. Kandaswamy and K. Rajasekaran as the persons who have been taken to Goa.

76. It is to be pointed out that according to the pleadings the expenses of the said three persons were borne by the Government of Pondicherry, and that taking Mr. Kandaswamy and Mr. K. Rajasekaran to Goa constitute a corrupt practice exercised by the agents of the returned candidate to secure the votes of Mr. M. Kandaswamy and Mr. K. Rajasekaran. It has been very vaguely suggested or averred that Thiru C. Jeyakumar and Mr. R. V. Janakiraman respectively, the Minister and the Chief Minister have acted as the agents of the returned candidate and with his consent, taken the two named persons to Goa and entertained them. As already pointed out, the two persons who were alleged to have been entertained are also alleged as the agents of the returned candidate in paragraph 6 of the election petition. The words "with the consent of the respondent" and the further averment that the taking of the two named persons is a corrupt practice committed with the consent of the returned candidate and that it had materially affected the result, is a mere repetition of the statutory provision and there is no triable issue arises on the pleadings. As already pointed out, consent cannot be inferred or implied. By mere repetition of the statutory provision, plea of consent of the returned candidate cannot be made out as it is a vague pleading. Even in paragraph 8 of the election petition it has not been stated that the returned candidate or his agent or a third party with the consent of the returned candidate have taken the three to Goa. It is true that the three persons named therein are voters and even assuming they have visited Goa during the relevant point of time, even according to the election petitioner, the three persons have stayed in the Government Guest House at Goa and their expenses have been met by the Government of Pondicherry, which would show that it is an official trip and it is not as if the returned candidate had taken them from Pondicherry to Goa entertained them and met the expenses. Even according to the election petitioner, the returned candidate was not seen in the company of the three named persons, nor he had met the expenses. The averments set out in paragraph 8 as well as paragraph 7 also suffer with the same inherent deficiency i.e., absence of material particulars and material facts.

77. It is not the case of the election petitioner that the said three persons, were taken to Goa by the returned candidate or his agent and the expenses had been incurred by the returned candidate or his election agent or any other person with his consent. The minimum elements of pleadings or requisites are absent in the pleadings. The absence of minimum particulars is fatal.

78. As already pointed out, consent is a constituent part of the corrupt practice as has been held in 1996 (1) SCC 394 (MORESHWAR SAVE V. DWARKADAS Y. PATHRIKAR). The Apex Court had also pointed out that mere repetition of words of the statute are not sufficient either to establish a corrupt practice or to establish the consent of the returned candidate as seen from 1969 VOL. III SCC 238 (S. N. BALAKRISHNA Vs. GEORGE FERNANDEZ).

79. Nowhere it has been stated that the returned candidate was present at Goa along with the three persons or he had taken them personally, nor it has been even stated that his agent or any other person with his consent have taken the three to Goa and entertained them at his cost. The pleadings in paragraph 8 of the election petition also suffers with the same deficiency of vagueness and they are general in character and the petitioner had not pleaded material facts or particulars. As such, there arises no triable issue out of the paragraphs 7 and 8 as well. Hence they are ordered to be struck off as any other course or trial will be a total embellishment, which is impermissible in law.

80. Taking up para 9 of the election petition, it is to be pointed out that Mr. R. Rajaraman, Janatha Dal M.L.A. was entertained by the respondent's agents. It has been further averred that Mr. N. Kesavan, M.L.A. and the Government whip entertained Mr. R. Rajaraman, M.L.A., who had been kept at Hotel Ashok at the first instance and taken to Kovalam and then to Tirupathy by Government vehicle PY01 6667. It has been further alleged that the expenses were met by the Government of Pondicherry. In respect of the said gravamen of plea, it has to be pointed out that nowhere it has been set out in para 9 that Mr. N. Kesavan, M.L.A., is an agent of the returned candidate. Further, except stating

that Mr. R. Rajaraman, M.L.A., was entertained by the respondent's agents, as rightly contended by the senior counsel, there is no pleading as to who are the agent/s, who entertained Mr. R. Rajaraman, where, when and how he was entertained by the alleged agent/s. In the absence of these facts and particulars in the first portion of the paragraph 9, this Court holds that it does not disclose a cause or triable issue which deserves a trial.

81. Nowhere it has been pleaded in paragraph 9 that Mr. N. Kesavan was an election agent of the returned candidate. Nor it has been stated that the said Mr. N. Kesavan M.L.A. with the consent of the returned candidate took the job of entertaining Mr. R. Rajaraman, M.L.A.. Further, it has not been stated as to the details of dates or time the said Rajaraman was entertained at Ashok Hotel or at Kovalam, much less at Tirupathy. It has been averred that Government vehicle has been utilised by Mr. N. Kesavan, M.L.A. and the entire expenses were met by the Government of Pondicherry, including travel and stay. It is too much to swallow that the Government itself had utilised its funds for the election prospects of the returned candidate. Nor it can be suggested that the Government is an agent of the returned candidate. As such, even the remaining portion of paragraph 9 also excepting vague allegations and suggestions bordering the plea of alleged corrupt practice, no triable issue arises as neither material facts nor particulars have been pleaded. Nor even the basic requirements have been set out.

82. As regards para 10 of the election petition, it is to be pointed out that Mr. N. Kesavan, M.L.A. acted as agent of the returned candidate and committed the corrupt practice. It is not in dispute that the returned candidate had not appointed any election agent and he had only appointed Mr. S. P. Sivakumar, M.L.A., as the agent for polling and counting. In this paragraph it has been averred that Mr. N. Kesavan acted as agent of the respondent. It has not been averred that the returned candidate and Mr. N. Kesavan, M.L.A., were seen together and there is no pleading or material particulars to show either explicit or implicit agency in favour of Mr. N. Kesavan. As already pointed out, there must be a plea even to fix an agent either explicit or implicit or such a person should have acted in the presence of the returned candidate so that an implicit agency could be inferred. This Court already referred to the law relating to pleadings and appointment of agents and the minimum particulars required to be set out in the election petition with respect to agent, their acts, if any, which would amount to corrupt practice, so as to set aside the election of the returned candidate.

83. The entirety of allegations in the above paragraphs 6 to 9 against the returned candidate were that he had seen his agents to commit corrupt practices. In none of the foregoing paragraphs it has been stated that the returned candidate was present at the alleged places where the voters were alleged to have been entertained or kept or taken or that he met the expenses. Nor there is a plea that the persons whose names have been set out could be the agents of the returned candidate. Nor it has been suggested that those persons have acted with the consent of the returned candidate or his agent. Vaguely it is alleged that certain persons have entertained the voters or taken them to some other places or kept them at a particular place. In the absence of any material particular or details in the pleadings, the alleged acts, even assuming to be true, can not be connected to the returned candidate, nor it could even constitute a corrupt practice on the part of the returned candidate. As there is no specific plea that it was on the instructions of the returned candidate the voters were entertained or taken to other places or kept in the hotels, and in the light of the fatal omissions which are material particulars in the pleadings, this Court holds that no triable issue arises. It has been repeatedly held that a friendly advice or influence arising from esteem or gratitude either to vote or desist from voting is not an undue influence, unless thereby the functioning of a free mind is destroyed. There is no such averment in any of the paragraphs in the election petition.

84. A plain reading of the averments in the election petition and in particular paragraphs 6 to 9, as rightly contended by the returned candidate, do not disclose a cause of action. Nor it deserves a trial as a triable issue as it was pointed out by Mr. R. Subramanian, the learned counsel for the election petitioner that the pleadings have to be read

as a whole to ascertain its full and true import and it is impermissible to allow a sentence or a particular line or passage to be read out of context and in isolation. It was also contended that the entire pleading has to be looked as a whole and it is the substance and not mere form that has to be looked into. It was also emphasised that pleading has to be considered without any addition or subtraction of words or change of its apparent grammatical sense or meaning.

85. Adverting the above points, with respect to the position of law there is no controversy. This Court has ten to add that with respect to the paragraphs already referred to and also further paragraphs to be referred to, this Court had ascertained the true import of the pleadings and it has not culled out a sentence or passage out of context, nor in isolation.

86. All that this Court had taken into consideration while considering the above paragraphs is that a person declared to have been elected is not dragged to Court to defend and support the validity of his election on allegations of corrupt practice which are neither precise nor definite and the details were of not being disclosed. As already set out above, unless the material facts and full particulars of the corrupt practice are set forth properly, the returned candidate is bound to be prejudiced in defending himself of the alleged charges of corrupt practices levelled against him and such an election petition will have to be dismissed not under section 86 but under the provisions of Code of Civil Procedure read with section 83(1) of the Representation of Peoples Act as the election petition does not disclose the cause of action.

87. In this context it is but essential to refer to the pronouncement of the Apex Court reported in AIR 1994 SC 2277 (SUBASH DESAI V. SHARAD J. RAO), which reads as follows :—

"Section 82 vests power in the High Court to dismiss an election petition which has not been properly presented as required by section 81; or where there has been non-compliance of S.82 i.e., non-joinder of the necessary parties to the election petitioner; or for non-compliance of section 117 i.e., non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirements of Section 83 of the Act. But section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected is not dragged to court to defend and support the validity of his election on allegations of corrupt practice which are not precise and details whereof have not been "supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practice are set forth properly in the election petition, the person whose election is challenged is bound to be prejudiced in defending himself of the charges, which have been levelled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegations, without taking the responsibility about the correctness thereof. Before the Court proceeds to investigate such allegations, the Court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the Court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by Section 83 have been furnished in the election petition, the election petition can be dismissed, nor under section 86, "but under the provisions of the Code of Civil Procedure, which are applicable, read with Section 83(1) of the Act, saying that it does not

disclose a cause of action. This aspect has been examined by this Court in detail in the cases of *Azhar Hussain v. Rajiv Gandhi* AIR 1986 SC 1253; *Hardwari Lal V. Kanwal Singh* AIR 1972 SC 515."

88. In AIR 1994 SC 1733 (*Quamarul Islam V. S. K. Kanta*) Dr. Anand J. speaking for the Bench laid down the essential tests with regard to the nature of pleadings and summarised the principles as hereunder :—

"In *Laxmi Narayan Nayak V. Ramratan Chaturvedi* (1990) 2 SCC 173 : (AIR 1991 SC 1001), after dealing with a catena of authorities, regarding the nature of pleadings and evidence to be led in support thereof in an election petition, a Division Bench of this Court to which one of us namely, Pandian, J.; was a party, formulated some essential tests with regard to the nature of pleadings and evidence in an election petition. It is useful to extract the principles laid down therein. They are as follows : (at P. 2003 of AIR)

- (1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal V. Rajiv Gandhi*, (AIR 1987 SC 1577) and *Kona Prabhakara Rao V. M. Seshagiri Rao* (AIR 1981 SC 658)
- (2) The allegations in the election petition should not be vague, general in nature or lacking or materials or frivolous or vexatious because the Court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh V. Surinder Singh* (AIR 1973 SC 2158), *Kona Prabhakara Rao V. M. Seshagiri Rao* and *Dhartipakar Madan Lal Agarwal V. Rajiv Gandhi* (AIR 1987 SC 1577)." "

89. In this respect Mr. R. Subramanian, the learned Counsel for the election petitioner relied upon the very same decision and pointed out that there is no requirement to take up and dispose of this original application at this stage, when counter has already been filed. It is to be pointed out that in the counter filed in the election petition itself the returned candidate had prayed for striking off the paragraphs. Simultaneously, the returned candidate had taken out this original application and pressed for orders even before framing of issues. This Court with a view to complete the record required the parties to make their submissions with respect to the original application while framing the issues. Thus it cannot be held that the request for striking off is belated, nor it could be suggested that no objection has been raised in this respect by the returned candidate at the earliest point of time.

90. Taking up para 11 of the election petition, it was pointed out by Mr. V. T. Gopalan, the learned senior counsel that the appointment of chairmans to five State owned Corporations for which appointments have been made is attributed to be the prospects for the election of the returned candidate and on that score the returned candidate is sought to be held guilty of corrupt practice as defined in Section 123(1)(b) and (2) of the Act and consequently election of the returned candidate has to be declared as void under Section 100 (1)(b) and (d)(ii) of the Act. Even according to the averments set out in paragraph 11 of the election petition, a news item appeared in the tamil daily "Daily Thanthi" on 26th September, 1997. The said news item has also been filed as document in support of the election petition. According to the election petitioner the election process started on 16th September, 1997 and as such no appointment could be notified by the Government of Pondicherry in respect of the five State owned Corporations till the election to the Council of States is being declared. It has been alleged that the conduct of Government of Pondicherry and the Chief Minister Mr. R.V. Janakihaman would amount to exercise of undue influence to secure the votes of M.L.As referred to in the said paragraphs. The said announcement, according to the election petitioner will amount to a "corrupt practice" as defined under Sections 123(1)(b) and (2) of the Act.

91. Section 123 reads thus :—

123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or non to withdraw his candidature.

Explanation :—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bonafide incurred at, or for the purpose, of, any election and duly entered in the account of election expenses referred to in Section 78."

92. In the present case even accepting the averments set out in paragraph 11 of the election petition, it cannot be assumed or inferred that the returned candidate is guilty of corrupt practices. Nothing has been attributed to the returned candidate, nor his agent. Nor any consent of the returned candidate had been pleaded with respect to the alleged corrupt practice. It is alleged that appointment of Chairman of the five State Owned Corporations by the Government of Union Territory of Pondicherry at or about the time, is sought to be attributed to the election prospects of the returned candidate. Admittedly, no appointment has been made after the commencement of election process and before declaration of results. This has been admitted even by the petitioner.

93. The learned counsel for the election petitioner heavily relied upon the publication in the local Tamil Daily published on 26th September, 1997. On 26th September, 1997 the list of candidates who contested the election has been notified. It is true that the election process commenced on 16th September, 1997. Even as per the news item, which is not a statement either by the administration of Union Territory of Pondicherry or by any responsible Minister or the Government official, that appointments are being made in respect of various Government Corporations.

94. The entirety of the news item which appeared in the tamil daily, on a reading, could be nothing but an inference simpliciter and not even an authentic information. Even as per the inference, the Central Government had permitted appointment of Chairmans to five of the Government Undertakings and till the election to the Rajya Sabha is completed no announcement would be made with respect to the said appointments. It is also the part of the said news that

appointments will be announced on or after 6th October, 1997.

95. As it is excepting this material, no other material has been placed or pleaded or disclosed so as to connect it to the returned candidate.

96. It is obvious that no appointment has been made after the commencement of election process and till the results of the election has been declared on 6th October, 1997 (the date of election has been wrongly stated as 6th October, 1996 in the election petition).

97. In paragraph 11, it has not been stated anywhere that R. V. Janakiraman is an agent and with the consent of the returned candidate appointments have been made. As already pointed out, no appointment has been made till 6th October, 1997, the date of declaration of results. The appointments to the various Corporations have been made by the Lieutenant Governor, Union Territory of Pondicherry and not by the Chief Minister.

98. A legal contention has been raised as to who is the authority to make appointments and what is the scope of powers that are being exercised by the Lieutenant Governor and part played by the Ministry in the Union Territory of Pondicherry, in detail at the hearing.

99. Admittedly, no notification appointing Chairmans to five Corporations have been made before the declaration of results nor any notification has been issued by the State Government or by any other authority competent to make the appointments. As such, it cannot be said that the subsequent appointment of Chairman to the State owned five Corporations would amount to corrupt practice on the part of the returned candidate so as to hold that the returned candidate is guilty of corrupt practice. The learned counsel for the petitioner relied upon a portion of the model code of conduct, which code of conduct is neither statutory nor it would be of any assistance to the election petitioner. It is not the case of the election petitioner that the returned candidate is the cause of cause for the appointments made subsequent to the declaration of results. Nor it has been averred that the returned candidate had assured the sitting members of the Legislative Assembly not to contest on the assurance that they will be appointed as Chairman of the one or other of the Government Undertakings. Even such a case has not been set out in the said paragraph. Nothing has been suggested to the returned candidate. But what is alleged against Mr. R. V. Janakiraman, Chief Minister, Union Territory of Pondicherry, even according to the election petitioner, had offered appointments to other sitting members of the Legislative Assembly. Even assuming that there was a suggestion or proposal to appoint Chairmans to various Government Corporations or Undertakings, in the absence of any averment to connect the same to the returned candidate and in the absence of any averment or averments of commission of corrupt practice on the part of the returned candidate or his election agent, and in the absence of any consent of election agent, this Court holds that para 11 also has not disclosed a cause of action which deserves a trial.

100. It is the specific allegation of the election petitioner that after the declaration of results, appointments have been made to the office of the Chairman of various State Undertakings and the appointees are the members of the Legislative Assembly who belong to various political parties. Incidentally, it has been alleged that it is a bargain between the political parties at the time of election to Rajya Sabha post. However, I do not find any specific plea in this respect. Be that as it may, there being no averment or allegation made in this respect against the returned candidate, it cannot even be suggested that the returned candidate committed corrupt practice in this respect. What transpires between a third party and others, what is sought to be suggested, and too, without a specific plea, is of little consequence and as on that score, it cannot even be imagined that the returned candidate is guilty of corrupt practice. Further, the appointment to the five

corporations have been made only after the declaration of election results and not after the commencement of process of election and before the declaration of results. The appointments, which is admitted, have been made by the orders of the Lieutenant Governor on 8-10-1997. The appointment and the publication or communication of the same after declaration of results is not material to this election dispute.

101. Functioning of Government in a State is governed by Article 166 of the Constitution, which lays down that there shall be a Council of Ministers with the Chief Minister at the Head to aid and advise the Governor in exercise of his functions except where he is required to exercise his functions under the Constitution in his discretion. Article 166 of The Constitution provides as to the conduct of Government business. Article 166(1) provides that all executive actions of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to the executive action that has to be expressed in the shape of the formal order or notification. It prescribes the mode in which an executive action has to be expressed. Every executive decision need not be as laid down under Article 166(1), but, when it takes the formality of an order, Art. 166(1) has to be complied with. Unless and until an order is expressed in the name of the Governor as required by Article 166 and communicated to the party concerned, it cannot be said to be an order by the State Government or Government as the case may be. The order has to be expressed in the name of the Governor as expressed by Article 166(1) and then it has to be communicated. Till a decision is taken by the executive and it is expressed in the shape of a formal order or notification or drawn up. It cannot be regarded as an order or notification or proceeding or decision which binds the State or which gives effect to an order or notification. As always before that stage, the authority making a decision could change his mind on his being apprised of some new materials or for other valid reasons. Thus, till 8th October, 1997 on which date the appointments have been notified to the office of Chairman of various Corporations, it cannot be even suggested on the basis of a news item which is only suggestive. It cannot be even suggested that there has been an appointment or certain process have started during the period of election.

102. It has to be pointed out that Mr. R. V. Janakiraman is the Chief Minister of Union Territory of Pondicherry and it is not as if all the proposals or decisions taken by the Council of Ministers are accepted by the Administrator and it is the decision of the Administrator, namely, The Lieutenant Governor of Pondicherry which is the final one. In fact the Constitutional Status, exercise of powers and functions of the Chief Minister of this Ministry in Pondicherry and the Lieutenant Governor vis-a-vis Council of Ministers in the other States and Governor are different. They are not identical as their powers are different and the constitutional provision also is distinct.

103. In this respect, the constitutional provisions have to be referred to. Article 239 of The Constitution in Part VIII of the Constitution relates to the Union Territories and it provides for the administration of Union Territories. The Union Territories are to be administered by the Union Government through an Administrator. A Union Territory is a separate entity. The President is the executive head of the Union Territory and exercises the powers specially vested in him under Article 239. Under Article 239, the President occupies, in regard to Union Territories a position analogous to that of a Governor in a State.

104. Section 3(8)(b)(iii) of the General Clauses Act defines "Central Government" as including in relation to the administration of a Union Territory, the Administrator thereof acting within the scope of the authority given to him under Art. 239 of the Constitution. By reason of the said definition, the Administrator is competent to exercise all powers vested by the Constitution in the Central Government as are entrusted to him by the President under Article 239(i).

105. Next, we have to refer to the status of the Administrator of the Union Territory. The Administrator of a Union Territory appointed under Article 239 is not a Constitutional functionary like a Governor in a State. The Administrator of the Union Territory of Pondicherry is not bound to act on the advice of his Council of Ministers even in

matters where he is not required to act in his discretion by or under the Constitution. The Administrator of the Union Territory of Pondicherry is a delegate of the President and cannot be equated to that of a Governor of a State. The Administrator of Union Territory of Pondicherry could very well differ from his Council of Ministers and may act under the order of the President i.e., the Central Government. The difference between the status the position of the President and the Governor on the one hand, and the Administrator of the Union Territory of the other could be compared from the language found in Articles 74 and 163 with the language of Section 44 of the Government of Union Territories Act 1963. Sections 44 to 46 of the said Act provides for setting up of a Council of Ministers in each Union Territory, their functions and powers. It is not necessary to set out the provisions namely sections 44 to 46 of the Government of Union Territories Act 1963 as the issue has already been decided by the Apex Court in *Devji Vallabhbhai v. Administrator Goa, Daman and Diu* reported in AIR 1982 SC. 1029. The relevant passage reads thus:—

"Article 74 provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who, shall in the exercise of his functions, act in accordance with such advice. The proviso to the Article is not material. Similarly, Art. 163 provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise or his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Once we compare the language of Arts. 74 and 163 with the language of S. 44 of the Act, the difference between the position of the President and the Governor on the one hand and the Administrator of the Union Territory on the other becomes manifest. The first difference is that he is similarly situated with the Governor but not with the President when he is to act in his discretion under the Act. Further, the Administrator has to act on his own unaided by the Council of Ministers when he is to exercise any judicial or quasi-judicial functions. The nearest analogy to this provision is one to be found in Art. 217(3) when the President has to determine the age of a Judge of the High Court. It has been held that while exercising the power conferred by Art. 217(3), the President discharges a judicial function and is not required to act on the advice of the Council of Ministers, his only obligation being to decide the question about the age of the Judge after consulting the Chief Justice of India (see *Union of India V. J. P. Mitter*, (1971) 3 SCR 483 (at p. 504-508); (AIR 1971 SC 1093 at pp. 1105, 1106). But there the analogy ends. The Administrator even in matters where he is not required to act in his discretion under the Act or where he is not exercising any judicial or quasi-judicial functions, is not bound to act according to the advice of the Council of Ministers. This becomes manifest from the proviso to S.44(1). It transpires from the proviso that in the event of a difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer the matter to the President for decision and act according to the decision given thereon by the President. If the President in a given situation agrees with what the Administrator opines contrary to the advice of the Council of Ministers, the Administrator would be able to override the advice of the Council of Ministers, under the proviso, obviously the President would not according to the advice of the Council of Ministers given under Art. 74. Virtually, therefore, in the event of a difference of opinion between the Council of Ministers of the Union Territory and the Administrator, the right to decide would vest in the Union Government and the Council of Ministers of the Union Territory would be bound by the view taken by the Union Government. Further, the Administrator enjoys still some more power to act in derogation of the advice of the Council of Ministers.

"The second limb of the proviso to Section 44(1) enables the Administrator that in the event of a difference of opinion between him and the Council of Ministers not only he can refer the matter to the President but during the interregnum where the matter is in his opinion so urgent that it is necessary for him to take immediate action, he has the power to take such action or to give such directions in the matter as he deems necessary. In other words during the interregnum he can completely override the advice of the Council of Ministers and act according to his right. Neither the Governor nor the President enjoys any such power. This basic functional difference in the powers and position enjoyed by the Governor and the President on the one hand and the Administrator on the other is so glaring that it is not possible to hold on the analogy of the decision in *Shamsher Singh's* case that the Administrator is purely a constitutional functionary bound to act on the advice of the Council of Ministers and cannot act on his own."

106. In AIR 1985 SC 357 (*Goa Sampling Employees' Association V. G. S. Co., of India Pvt. Ltd.*), it has been held that the concept of State Government is foreign to the administration of a Union Territory which has to be administered by the President through an Administrator appointed by him. The position of Administrator is little different from that of a Governor of a State. Such an Administrator can differ with his Council of Ministers and he must then obtain the orders of the President, meaning thereby of the Central Government. Therefore the Administrator of a Union Territory does not qualify for the description of a State Government. The Apex Court held thus:—

"The position, the power, the duties and functions of the Administrator in relation to the President have been overlooked. On a conspectus of the relevant provisions of the Constitution and the 1963 Act, it clearly transpires that the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that of a Governor of a State. Administrator can differ with his Minister and he must then obtain the orders of the President meaning thereby of the Central Government. Therefore, at any rate the administrator of Union Territory does not qualify for the description of a State Government."

107. On consideration of the provisions contained in Part VII of the Constitution and the provisions of the Government of Union Territories Act, 1963, it has to be held that the Lieutenant Governor of Union Territory of Pondicherry is not bound by the decision of the Council of Ministers as in the case of Ministry in other states, like Tamil Nadu. It is the decision of the Central Government or the Administrator of the Union Territory as the case may be, by which administration is being carried on including the appointments to the office of Chairman of various Corporations.

108. In effect, the advice of Chief Minister or the Council of Ministers in the Union Territory of Pondicherry need not necessarily be accepted or acted upon by the Administrator and it is the decision of the Central Government or the Administrator as the case may be. The appointments referred to by the election petitioner are that to be made by the Administrator and it cannot be assumed that it is the decision of the Chief Minister, or the matter, is that of the Council of Ministers in the Union Territory of Pondicherry. As such, it cannot be held or suggest that there is political bargain, which is sought to be made out for the prospect of the returned candidate. As already held, the returned candidate cannot be held to be guilty of corrupt practice, nor the Chief Minister Mr. R. V. Janakireman could have taken such a decision. Factually, the appointments have been made long after the declaration of results.

109. Harking back, it has to be pointed out that the returned candidate, on the averments set out in para 14 of the election petition it is alleged is guilty of corrupt practices. Further there has been no pleading of consent. There is no

pleading of agency either explicit or implicit and mere repetition of statutory words as found in the Representation of People Act is of no consequence or avail. Consent of the returned candidate is the lifeline of the allegations relating to corrupt practice. In the absence of a definite plea with material particulars of the allegations of corrupt practice, in the paragraph as well, this Court holds that there is no triable issue arises in this respect.

110. The Model Code of Conduct is relied upon by Mr. R. Subramanian, the learned counsel for the election petitioner. It is still a model code and the petitioner in an election petition should establish his case and bring the same under any one or more of the grounds set out in Section 123 of The Representation of the People Act, while seeking to set aside the election of a returned candidate on grounds of corrupt practice.

111. Before concluding it has to be pointed out that according to petitioner the alleged expenses were met by the Government of Union Territory of Pondicherry in respect of two alleged corrupt practices. The Government cannot be held to be agent; or such a plea is available or pleaded. The Government could never be the agent of a candidate much less a returned candidate as held in AIR 1970 SC 211 and 1982 NOC 70 (Guj) this also fails.

112. For all the above reasons, this Court holds that even in respect of paragraph 11 of the election petition also, no triable issue arises for trial. As already pointed out even accepting the averments set out in paragraph 11 of the election petition, this Court holds that the returned candidate cannot be held to have committed corrupt practice as alleged.

113. Paragraph 12 of the election petition is a general statement and it does not refer to any of the specific allegations of corrupt practice. Paragraphs 13 and 14 have already been considered and striking off has been ordered. As regards para 15, though the returned candidate had not prayed for striking off, it automatically follows that there is no triable issue arises even in respect of that paragraph as it is only by way of reiterating of the reliefs prayed for. In the remaining portions of the election petition as well no issue much less triable issue arises.

114. In the circumstances, on a due consideration of all the contentions raised by the Counsel for the election petitioner and the returned candidate, the Original Application No. 298/98 has to be allowed and consequently, paragraphs 5 to 11, 13 and 14 are ordered to be struck off from the election petition. Hence as a further consequence, it has to be held that nothing further remains to be decided in the election petition. Hence, this Court will have to pass a consequential order which is the final order in the Election Petition on that basis. In the circumstances the Original Application No. 298/98 is allowed as prayed for. As a further consequence, this Court also holds that the election petition deserves to be dismissed following the decisions of Their Lordships of the Supreme Court in AIR 1994 SC 2277 (Subash Desai V. Sharad J. Rao), AIR 1986 SC 1253 (Ashraf Hussain V. Rajiv Gandhi) and it is unnecessary to refer multiplicity of the case law.

115. Accordingly, the Original Application stands allowed as prayed for and the Election Petition stands dismissed under Section 83(1) of the Representation of the People Act, 1951 read with the Code of Civil Procedure, 1908. The parties to bear their respective costs in the original application as well as in the election petition.

Witness The Hon'ble Thiru Manmohan Singh Liberhan, Chief Justice at Madras aforesaid, this the 18th day of August, 1998.

Sd/- Illegible,
Assistant Registrar.

Original Side-II.
[No. 82/CS-POND/1/98]

By Order,

SHARAN PAL SINGH, Secy.

नई दिल्ली, 29 सितम्बर, 2000

अ.अ 162.—भारत निर्वाचन आयोग 1998 की निर्वाचन अर्जी सं. 1 (बी. नागयणास्वामी बनाम सी.पी. तिरुणावुक्कारासु) में मद्रास स्थित उच्च न्यायालय के

तारीख 18-8-98 के अदेश से उत्पन्न 1999 की सिविल अपील संख्या 3871 में उच्चतम न्यायालय के तारीख 19-1-2000 के अदेश की लांक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) को धारा 116ग की उपधारा (2) के खण्ड (ख) के अनुसरण में इसके द्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/रा.स.—पांडिचेरी/1/98]

अदेश से,

शरन पाल सिंह, सचिव

New Delhi, the 29th September, 2000

O.N. 162.—In pursuance of clause (b) of sub-section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 19-1-2000 of the Supreme Court of India in Civil Appeal No. 3871 of 1999 arising from the order dated 18-8-98 of the High Court of Judicature at Narayanasamy vs. C. P. Thirunavukkarasu).

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3871 OF 1999

Mr. V. Narayanaswamy ... Appellant
versus

Mr. C. P. Thirunavukkarasu ... Respondent

JUDGEMENT

D. P. Wadhwa, J.

This appeal is directed against the judgment dated August 18, 1998 of the Madras High Court allowing the miscellaneous application (Original Application No. 298/98) filed by the respondent under Order 6 Rule 16 (1) and Order 7 Rule 11(2) of the Code of

16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

- which may be unnecessary, scandalous, frivolous or vexatious, or
- which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- which is otherwise an abuse of the process of the Court."

2. "Rejection of plaint.—The plaint shall be rejected in the following cases :—

- where it does not disclose a cause of action,
- where the relief claimed is undelivered, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so.
- where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so.
- where the suit appears from the statement in the plaint to be barred by any law.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff".

Civil Procedure (for short the 'Code') and thus holding that the election petition filed by the appellant under Section 100(1)(b) and (d) of the Representation of the People Act, 1951 (for short the 'Act') stands dismissed under Section 83(1) of the Act read with the Code. In the election petition appellant had challenged the election of the respondent to the Council of States (Rajya Sabha) from the Pondicherry Legislative Assembly.

On September 16, 1997 Election Commission issued a notification calling upon the Legislative Assembly of the Union Territory of Pondicherry to fill up the vacancy on the completion of the term of the appellant in the Rajya Sabha. The notification also stipulated the election schedule. By the same notification the Secretary, Pondicherry Legislative Assembly was appointed as Returning Officer for the election. On September 26, 1997 the Election Commission released the list of contesting candidates. These were the appellant belonging to the Indian National Congress (INC) and the respondent belonging to Dravida Munnetra Kathagam (DMK). On October 23, 1997 election was held and results declared the same day. Out of the total electorate of 29 members of the Legislative Assembly 27 cast their votes. Respondents polled 15 votes, the appellant 12. On October 7, 1997 notification dated October 6, 1997 to this effect was published in the Government Gazette. On November 17, 1997 appellant filed the election petition in the High Court challenging the election of the respondent. He alleged that election of the respondent was vitiated due to corrupt practice within the meaning of Section 123(1) (B) (b)³ and Section (1) (d)⁴ of the Act, committed by the respondent, his agents and other persons with the consent of the respondent.

³"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act,

(1) "Bribery", that is to say—

(A)

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate, or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature."

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimate in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right. Provided that—

....."

⁴"100. Grounds for declaring election to be void—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a)

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

The appellant alleged the following corrupt practices committed by the respondent :—

- 1 Respondent was proposed by Mr. R. V. Janakiraman, Chief Minister belonging to DMK. For the second set of application the name of respondent was proposed by Mr. C. Jayakumar, Minister in the Government of Pondicherry. The proposals were seconded respectively by Mr. M. Kandaswamy, Deputy Speaker and Mr. K. Rajasckheran, Parliamentary Secretary to the Chief Minister. All these four persons acted as agents for the respondent in the election, (para 6 of the election petition).
2. After the commencement of the election process on September 26, 1997 Government of Pondicherry announced appointment of Chairmen for five State owned corporations. It was published in the daily newspaper Daily Jhanthi on September 27, 1997. None of the nominees was from Congress. This amounted to exercise of undue influence to secure the votes of the MLAs, particularly the MLAs who were nominated as Chairmen. The Government of Pondicherry was headed by Mr. R. V. Janakiraman, who acted as agent of the respondent. Announcement of the notification materially the result of the election. (para 11 of the election petition)
3. After the date of the election was fixed for October 3, 1997 the appellant wanted to meet all the MLAs at Pondicherry. However, MLAs belonging to DMK, Tamil Manila Congress, Communist Party of India, Pattai Makkei Katchi, Janata Dal and also independent MLA were not available in Pondicherry. The MLAs were taken

(c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i)

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agents, or

(iii)

(iv)

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate or his election agent;

(b) Omitted.

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents.

then the High Court may decide that the election of the returned candidate is not void".

out of Pondicherry, entertained there and were brought back to Pondicherry on October 2, 1997. Similarly except two Ministers, Mr. S. P. Sivakumar and Mr. R. Viswanathan, no other Minister was available in Pondicherry. The Chief Minister Mr. R. V. Janakiraman took the MLAs and kept them at Hotel Ashok, Pondicherry by providing all facilities to them from September 25, 1997 to September 27, 1997. Thereafter the MLAs were shifted to Mahabalipuram and entertained in five star hotels. Complaint to this effect was sent by the appellant to the Election Commission on October 2, 1997. (para 7 of the election petition)

4. Mr. C. Jayakumar, who had proposed the name of the respondent, took Mr. Kandaswamy and Mr. Rajasekheran to Goa with a view to influence them. They were taken there in a Government vehicle bearing registration No PY-01-C-2345 and PY-01-D-9289 on September 27, 1997, returning on October 1, 1997. In Goa all the three stayed in Government Guest House. Entire expenses for their travel and stay at Goa were met by the Government of Pondicherry. Both Mr. Kandaswamy and Mr. Rajasekheran were taken to Goa and entertained there as a reward for voting in favour of the respondent. They were influenced to cast their votes in favour of the respondent. This conduct of Mr. C. Jayakumar, who was agent of the respondent, amounted to corrupt practice. Both Mr. C. Jayakumar and Mr. R. V. Janakiraman, the Chief Minister, did the corrupt practice with the consent of the respondent, which materially affected the election result in so far as it concerned the respondent.

5. Mr. N. Keshevan, another agent of the respondent, also influenced Mr. R. Rajaraman Janata Dal MLA. Mr. N. Keshevan, MLA is the Government whip belonging to DMK. Mr. R. Rajaraman was kept at Ashok Hotel at Pondicherry and then taken to Kovalem, Chenglenut District, then to Trupati in a Government vehicle bearing registration No PY-01-6667 and then brought back to Pondicherry on October 2, 1997. Entire expenses of this trip were borne by the Government of Pondicherry headed by Mr. R. V. Janakiraman, an agent of the respondent.

In the counter affidavit filed by the respondent on May 25, 1998 he denied all the allegations made against him. It was submitted that the allegations of corrupt practices alleged in the election petition were vague and unspecific and bereft of material facts and particulars. It was also submitted that the election petition be dismissed under Order 6 Rule 16 and Order 7 Rule 11 of the Code. On the same day the respondent also filed a miscellaneous application (Original Application No. 298 of 1998) praying for striking out the paragraphs 5 to 11, 13 and 14 of the election petition on the ground that material facts were not stated in the election petition and praying for dismissal of the election petition to

that score. Respondent also raised objection to the validity of the verification to the petition and to the affidavit in support of the allegation of corrupt practices. The appellant filed rejoinder to the counter affidavit and reply to the miscellaneous applicant reaffirming what he had said in the election petition. He said the election petition was duly verified as per law and the affidavit legally correct.

On the pleadings of the parties High Court framed the issues. However by the impugned judgement dated August 18, 1998 High Court allowed the miscellaneous application of the respondent and dismissed the election petition without holding any trial. Aggrieved appellant got leave to appeal and this is how the matter is before us.

Mr. Murli Bhandare, learned senior counsel for the appellant, confined his submissions to corrupt practices alleged in paras 6, 7, 8, 9 & 11 of the election petition, which have been noted above. He submitted that High Court was in error in dismissing the election petition without trial on the ground that material facts were not set out when High Court itself had framed issues on the basis of the material facts set out in the election petition. He said High Court failed in appreciating the crucial distinction between material facts and material particulars and that High Court also failed to take notice of the decision of this Court in *D. Ramachandran vs. R. V. Janakiraman and others* [1999 (3) SCC 267] holding that the court cannot dissect the pleadings into several parts to consider whether each one of them disclosed a cause of action. Mr. Bhandare said following questions arose for consideration by this Court:—

- (i) Whether the High Court was justified in dismissing the election petition without trial although material facts were set out in the petition and issues were framed for trial.
- (ii) Whether the High Court was justified in entertaining a miscellaneous application on behalf of the returned candidate for striking out paragraphs 5 to 11, 13 and 14 of the election petition after framing issues for trial on the basis of the pleadings and after hearing the parties.
- (iii) Whether the High Court was justified in dissecting the pleadings into several parts to consider whether each one of them discloses a cause of action.
- (iv) Whether the High Court was justified in rejecting the election petition without trial without appreciating the crucial distinction between material facts and material particulars.

We may refer to the verification to the election petition and also to the affidavit, which is required to be filed, in the form prescribed, by the appellant:

"VERIFICATION

I, Mr. V. Narayanasamy, son of Sri Velu, residing at No. 5, Ellaiamman Koil Street, Pondicherry-1, the petitioner herein do hereby declare that what all stated in the above paragraphs 1 to 15 are all true to the best of my knowledge, information and belief

Verified at Chennai this 17th day of November, 1997.

Petitioner."

"AFFIDAVIT OF V. NARAYANASAMY

I, Mr. V. Narayanasamy, son of Velu, Hindu, aged about 50 years, residing at No. 5, Ellaianman Koil Street, Pondicherry-1 now temporarily come down to Chennai, the petitioner in the Election Petition calling in question the Election of Shree C. P. Thirunavukkarasu, the respondent in the Election Petition, makes solemn affirmation/Oath and say:—

- (a) that the statements made in paragraphs 7 to 10 of the accompanying Election Petition about the commission of the corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1) (B) and (2) of the particulars of such corrupt practice mentioned in paragraphs 7 to 10 of the same petition are true to knowledge.
- (b) That the statements made in paragraph 7 to 10 of the accompanying Election Petition about the Commission of the corrupt practice of gratifications a motive or reward for securing votes and undue influence as referred under Section 123(1)(b) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraphs 7 to 11 of the same petition are true to my information;
- (c) That the statements made in paragraph 11 of the accompanying Election Petition about the Commission of corrupt practice of gratification as a motive or reward for securing votes and undue influence as referred under Section 123(1)(B) and (2) of the Representation of the People Act, 1951 and the particulars of such corrupt practice mentioned in paragraph 11 of the same petition are true to my information."

Both the verification and the affidavit do not meet the requirement of law.

In the counter affidavit filed to the election petition, the respondent had specifically for striking out paras 5 to 11, 13 and 14 of the election petition on the ground that in those paragraphs there were no material facts and that material facts necessary to constitute cause of action had not been pleaded. He had also prayed for dismissal of the election petition under Order 6 Rule 16 and Order 7 Rule 11 of the Code. Appellant, it appears, filed his rejoinder denying that the material facts had not been stated or that the petition had not been verified properly or the affidavit in support of corrupt practice did not conform to the requirements of law. In the miscellaneous application (Original Application No. 298/98), the respondent had again prayed for striking out the paragraphs 5 to 11, 13 and 14 of the election petition as well as for dismissal of the election petition on the grounds that the averments pleaded in those paragraphs did not give rise to (i) any triable issue and (ii) the election petition suffered from lack of valid verification and the affidavit. Again in reply to this, the appellant denied that there were no material facts and that the verification in the petition was not proper or that the affidavit was not in accordance with the Rules.

The question, therefore before us, is—what is the effect of lack of material facts, material particulars,

proper verification to the election petition and the defective affidavit required to be filed in the form prescribed? The respondent says that when the petition lacked even material facts and since the petition did not disclose cause of action for having committed any corrupt practice, for all these reasons High Court was justified in dismissing the petition at the threshold without going for a trial.

In support of their rival contentions various decisions of this Court were cited at the Bar. We may refer to some of them.

In *Ch. Subbarao vs. Member, Election Tribunal, Hyderabad* [(1964) 6 SCR 213] (CB) election petition was type written and the copies which accompanied the petition were carbon copies of the type written script, so there was no question of the copies being other than true copies. The copies bore two signatures in original of the petitioner authenticating both the contents of the petition as well as the verification thereof. The petitioner, however, did not insert the words "true copy" before or above the signatures. High Court considered that this rendered the petition filed not in accordance with Section 81(3) of the Act and on that ground the petition was dismissed. The view of the High Court was challenged before this Court. While explaining the proposition that an election petition was not to be equated to an action at law or in equity but that as the rights were purely the creature of statute, if the statute rendered any particular requirement mandatory, the courts possessed and could exercise no dispensing power to waive non-compliance. This Court held that the alleged defect in the petition did not constitute non-compliance with the provisions of Section 81(3) of the Act as there was substantial compliance with those provisions. In coming to this conclusion, the Court relied on its earlier Constitution Bench decision in the case of *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore & Ors.* [(1964) 3 SCR 573].

In *Murarka Radhey Shyam Ram Kumar's case* [(1964) 3 SCR 573] (CB) this Court held that defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings as required by clause (c) of Section 81(3) is not fatal to the maintainability of the election petition. The Court then considered the arguments relating to the affidavit which accompanied the election petition in respect of corrupt practice alleged in the petition. The argument was that the affidavit was neither in the prescribed form nor was it properly sworn as required by the Rules under the Conduct of Election Rules, 1961. Therefore, there was a failure to comply with the provisions of Section 83(1) of the Act. Further argument was that an election petition under Section 81 must comply with the provisions of Section 83 and unless it complies with those provisions, it is not an election petition under Section 81. The Court approved the view of the Election Tribunal that the affidavit was in the prescribed form but due to inexperience the Oath Commissioner had made a mistake in the verification portion of the affidavit. This Court did not think that the defect in the verification due to the inexperience of the Oath Commissioner was such a fatal defect as to require the dismissal of the election petition.

In *Daulat Ram Chauhan vs. Anand Sharma* [AIR 1984 SC 621 = (1984) 2 SCC 64] (2J), this Court laid two propositions :—

- "1. A person may, due to sympathy or on his own, support the candidature of a particular candidate but unless a close and direct nexus is proved between the act of the person and the consent given to him by the candidate or his election agent, the same would not amount to a pleading of corrupt practice as contemplated by law. It cannot be left to time, chance or conjecture for the court to draw an inference by adopting an involved process of reasoning. In fine, the allegation must be so clear and specific that the inference of corrupt practice will irresistibly admit of no doubt or quaim.
2. Where the allegation of fraudulent practice is open to two equal possible inferences the pleadings of corrupt practice must fail. For instance, A, or in this case Sood or Batish, joined or participated or was present in an election rally or crowd and may have shouted slogans on his own without taking the consent of the candidate concerned, this would not be a corrupt practice within the meaning of Section 123(2) because the element of consent is wholly wanting."

In *F.A. Sapa & Ors. vs. Singora & Ors.* [(1991) 3 SCC 3751 (3J)] the question before the High Court was whether the election petition was in conformity with the requirements of Section 81^a and 83^b of the

^a81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [omitted by Act 47 of 1966, s. 39 (w.e.f. 14-12-1966)]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

^b83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that, where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Representation of the People Act, 1951 and the Rules framed thereunder. Preliminary objection raised by the appellant, the successful candidate, about the maintainability of the petition, was negatived by the High Court. Against that order he came to this Court. One of the questions before this Court was if the election petition was liable to be dismissed under Section 83 of the Act primarily on the ground that the affidavit filed by the original petitioner was not strictly in conformity with Form 25, inasmuch as the verification as regards the averments based on knowledge and the averments based on information had not been made separately as required by the said Form prescribed by Rule 95-A of the Rules. This Court considered various provisions of the Act, particularly Part VI entitled "Disputes Regarding Elections" and said that it constituted a self-contained code. It was submitted by the appellant in that case that there was failure to comply with even the basic requirements of an affidavit and as a matter of fact it was a case of no compliance. This Court held that where several paragraphs of the election petition remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. It was further submitted in that case that proof of allegation of corrupt practice would visit the returned candidate with certain serious consequences and must, therefore, be viewed seriously. It was further held by this Court that inquiry being quasi-criminal in nature, the Court must always insist on strict compliance with the provisions of law in that behalf and failure to do so must prove fatal. This Court said :—

"It is fairly well settled that our election law being statutory in character must be strictly complied with since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law. But at the same time the purity of election process must be maintained at all costs and those who violate the statutory norms must suffer for such violation. If the returned candidate is shown to have secured his success at the election by corrupt means he must suffer for his misdeeds."

This Court observed that where the petitioner has alleged corrupt practice that is not enough, proviso to Section 83 demands that the petition shall be accompanied by an affidavit in the prescribed form supporting the allegation of such corrupt practice and particulars thereof. The Court said :—

"Therefore, an election petition in which corrupt practice is alleged stands on a different footing from an election petition which does not carry such an allegation. The legislature has taken special care to ensure that ordinary verification will not suffice, it must be supported by an affidavit in the prescribed form. Form 25 has been prescribed for such an affidavit under Rule 94-A of the Rules. That rule says that the affidavit referred to in the proviso to Section 83(1) shall be in Form 25. The form of the affidavit requires the deponent to state which of the paragraphs

of the election petition in which allegations of corrupt practice are made are based on his own knowledge and which are based on his information. Section 86(1) then mandates that the High Court "shall" dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the R.P. Act. The language of this sub-section is quite imperative and commands the High Court, in no uncertain terms, to dismiss an election petition which does not comply with the requirements of Section 81 or Section 82. This mandate is, however, qualified by section 86(5) 'referring to earlier.'

The Court then observed that the procedural precautions intended to ensure that the person making the allegation of corrupt practice realizes the seriousness thereof as such a charge would be akin to a criminal charge since it visits the party indulging in such practice with a twofold penalty and that is why this Court described it as quasi-criminal in nature. It is, therefore, equally essential that the particulars of the charge or allegation are clearly and precisely stated in the election petition to afford a fair opportunity to the person against whom it is levelled to effectively counter the same [see *K. M. Mani Vs. P. J. Anthony* (1979) (2) SCC 221]. This Court then said :—

"Section 83(1)(a) stipulates that every election petition shall contain a concise statement of the 'material facts' on which the petitioner relies. That means the entire bundle of facts which would constitute a complete cause of action must be concisely stated in an election petition. Section 83(1)(b) next requires an election petitioner to set forth full 'particulars' of any corrupt practice alleged against a returned candidate. These 'particulars' are obviously different from the 'material facts' on which the petition is founded and are intended to afford to the returned candidate an adequate opportunity to effectively meet with such an allegation. The underlying idea in requiring the election petitioner to set out in a concise manner all the 'material facts' as well as the 'full particulars', where commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition."

Then the Court held as under :—

"From the text of the relevant provisions of the R.P. Act, Rule 94-A and Form 25 as well as Order 6 Rule 15 and Order 19 Rule 3

786. Trial of election petitions—(1) to (4)—

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

(6) —.....

(7) —.....

of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desires better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under Section 81(3) as indicated earlier. Similarly, the court would have to decide in each individual case whether the schedule or annexure referred to in Section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter."

In *Gajanan Krishnaji Bapat and another vs. Dattaji Raghobaji Meghe and others* [AIR 1995 SC 2284- (1995) 5 SCC 347], this Court again said :—

"1. Section 83 of the Act provides that the election petition must contain a concise statement of the material facts on which the petitioner relies and further that he must set forth full particulars of the corrupt practice that he alleges including as full a statement as possible of the name of the parties alleged to have committed such corrupt practices and the date and place of the commission of each of such corrupt practice. This section has been held to be mandatory and requires first a concise statement of material facts and then the full particulars of the alleged corrupt practice, so as to present a full picture of the cause of action.

2. A petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit and the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice. This becomes necessary to bind the election petitioner to the charge levelled by him and to prevent any fishing or roving enquiry and to prevent the returned candidate from being taken by a surprise. (see : *Sampat N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238].

In *T. M. Jacob vs. C. Poulse and others* [1999 (4) SCC 274] a Constitution Bench of this Court was considering a judgment in the case of *Dr. Shipra vs. Shanti Lal Khoiwal* [1996 (5) SCC 181] wherein on the basis of non-compliance of Section 81(3) the election petition was dismissed at the threshold under

Section 86(1) of the Act. Then considering the provisions of Sections 81, 82, 83, 86(1) and 86(5) of the Act the Court said:—

“(That apart), to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes—those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore* [1964 (3) SCR 573] and *Ch. Subbarao vs. Member, Election Tribunal, Hyderabad* [1964 (6) SCR 213] cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure.”

In *D. Ramachandran vs. R. V. Janakiraman and others* [1999 (3) SCC 267] a three Judge Bench of this Court observed:—

“It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the court has to find out whether those averments disclose a cause of action or a triable issue as such. The court cannot probe into the facts on the basis of the controversy raised in the counter.”

The Court said that under Order 7, Rule 11 of the Code the court is to reject the plaint where it does not disclose the cause of action. But there is no question of striking out any portion of the pleadings under this Rule. The Court said:

“The application filed by the first respondent in OA No. 36 of 1997 in on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC,

the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition.”

The case of *Dr. Shipra (Smt.) and others vs. Shanti Lal Khelwal and others* [(1996) 3 SCC 181] was considered by the Constitution Bench in the case of *T. M. Jacob vs. C. Poulouse and others* [(1999) 4 SCC 274]. In *Dr. Shipra's* case a preliminary objection was raised that copy of the notice together with the affidavit in support of the election petition on the allegation of corrupt practices did not contain the verification by the Notary and hence the election petition was not maintainable in accordance with Section 83(1)(c) of the Act. The objection was upheld by the High Court and appeal against that was dismissed by this Court. The question thus raised before this Court for its consideration was whether the copy of the election petition accompanied by support affidavit served on the respondent along with Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961 without attestation part duly verified by the District Magistrate/Notary/Oath Commissioner could be said to be “true and correct copy” of the election petition as envisaged in Section 81(3) of the Act. Explaining the judgment in *Dr. Shipra's* case the Constitution Bench in *T. M. Jacob's* case observed:—

“The defect found in the ‘true copy’ of the affidavit in *Dr. Shipra* case was not merely the absence of the name of the Notary or his seal and stamp but a complete absence of “notarial endorsement” of the verification as well as absence of an “affirmation” or “oath” by the election petitioner. It was in that context that the Bench had found in *Dr. Shipra* case that the returned candidate would have got the impression, on a perusal of the “true copy” of the affidavit, that there was no duly sworn and verified affidavit filed in support of the allegations of corrupt practice by the election petitioner. It was precisely on account of this “fatal” defect that *K. Ramaswamy J.* opined that “the principle of substantial compliance cannot be accepted in the fact situation”. Thus the judgment in *Dr. Shipra* case is confined to the “fact situation” as existing in that case.....”

In *Dr. Shipra's* case this Court held:—

“Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as a integral scheme. When so read, if the court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the court is required to go into the question and decide the preliminary objection. In case the court does not uphold the same, the need to conduct trial would arise. If the court upholds the preliminary objection the election petition would result in dismissal at the threshold, as the court is left with no option except to dismiss the same.”

In *R. P. Moidutty vs. P. T. Kunju Mohammad & Anr.* [IT 1999 (7) SC 457] (3J) this Court was considering the question regarding nature of particulars

required to be pleaded in support of an averment of corrupt practice. It said that heavy onus lies on the petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly freely and purely expressed. And further that "as the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same". In this case, the corrupt practice alleged was screening of a video film by the successful candidates which according to the petitioner materially affected the result of the election and vitiated by the commission of corrupt practice within the meaning of sub-section (3) and (3A) of Section 123 of the Act. It was alleged that the film was exhibited throughout the constituency during the election. The photo-contents of the video film as also the speeches contained therein were highly objectionable and inflammatory. This Court also referred to the verification to the election petition as well as to the affidavit required to be filled in Form No. 25 appended to the Rules. The verification was as under:

"I, R. P. Moidutty, S/o Abubakker Haji, aged 54, petitioner in the above election petition do hereby declare that the averments in para 1 to 17 are true and made from personal knowledge and on the basis of personal enquiry I believe that all the averments made in para 1 to 17 is true.

Signed and verified in this the 21st day of June, 1996.

PETITIONER"

This Court then said :

"Application of the abovenoted well settled principles to the case at hand raises a gloomy picture indeed. The petition is bereft of some material facts and particulars. It does not set out names of even a few persons who viewed the film and/or in whose presence it was exhibited though it was not necessary for the petitioner to have alleged the names of each and every person who had viewed the video film. However the names of a few persons who had viewed the film and in whose presence it was exhibited were expected to have been alleged in the election petition so as to put respondent No. 1 on notice that these were the persons who were proposed to be examined by the petitioner in support of his averments. The petitioner's pleading in this regard fails to satisfy the requirements of proviso to sub section (1) of Section 83 of the Act as explained in *Azhar Hussain vs. Rajiv Gandhi* [(1986) 2 SCR 782]."

"The affidavit filed by the petitioner in support of the election petition as required by Rule 94 A also does not satisfy the requirement of proviso to sub-section (1) of Section 83 of the Act and Form No. 25 appended to the Rules. The several averments relating to commission of corrupt practice by the first respondent as contained in paragraphs 4, 10, 12 and 16 of the petition have been verified

as true to the best of "my knowledge and information"—both, without specifying which of the allegations were true to the personal knowledge of the petitioner and which of the allegations were based on the information of the petitioner believed by him to be true. Neither the verification in the petition nor the affidavit gives any indication of the source of information of the petitioner as to such facts as were not in his own knowledge."

"All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in *F.A. Sapa etc. etc. v. Sincara and others* JT 1991 (2) SC 503, the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured [see : *Murarka Radhey Sham Ram Kumar v. Roop Singh Rathore and Ors.* AIR 1964 SC 1545 A. S. Subbarai v. M. Muthiah 5 ELR 21] in the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings."

In *L. R. Shivaramagowda & Ors. vs. T. M. Chandrashekar (Dead) By LRs. & Ors.* [(1999) 1 SCC 666] (3J) this Court again considered the importance of pleadings establishing in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and said :

"This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In

Balwan Singh v. Lakshmi Narain [AIR 1960 SC 770 = (1960) 3 SCR 91] the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given."

Then the Court referred to the various judgments of this Court drawing distinction between the "material fact" and "material particulars" holding that if petition suffers from lack of material facts, it is liable to be summarily rejected for want of cause of action and if the deficiency is only of material particular the Court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. With regard to the affidavit to be filed along with the election petition in the prescribed Form No. 25, the Court observed that the defect in such affidavit could be cured unless it formed the integral part of the petition in which case, the defect concerning material facts will have to be dealt with subject to limitation under Section 81 of the Act. In this case, the Court observed that "if the above well settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same." The affidavit filed along with the petition does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. The Court said that the affidavit was not in conformity with the prescribed Form No. 25 and thus, there was a failure to comply with Rule 94-A of the Conduct of Elections Rules and that it is a very serious defect.

In **H. D. Revanna vs. G. Pattaswamy Gowda and Others** [(1999) 2 SCC 217] (21) appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Two of the grounds on which dismissal of the election was sought were that (1) allegations of corrupt practice were vague and did not contain material facts or particulars and (2) affidavit in support of the allegations of corrupt practice was not in conformity with Rule 94A or Form 25 as prescribed. On facts, this Court held that contents were not vague and that there had been

substantial compliance with the provisions of law. The Court noticed that the body of the petition itself mentioned the matters which were within the knowledge of the petitioner himself and the matters of which he got information from others and believe them. The Court distinguished the judgments of this Court in **Dr. Shipra (smt.) & Ors. vs. Shanti Lal Kanoiwal and Ors.** [(1996) 5 SCC 181] ; **L. R. Shivarajagowda & Ors. vs. T. M. Chandrashekar (dead) by LRs & Ors.** [(1999) 1 SCC 666] and **Dharamvir vs. Anjar Singh & Ors.** [(1996) 3 SCC 158].

It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action of a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practice were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of

the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6, Rule 16 and Order 7, Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of duty of the court suo moto even to direct furnishing of better particulars when objection is raised by other side. Where the petition does not disclose any cause of action it has to be rejected. Court however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. Petition has to be considered as a whole. There cannot be a partial rejection of the petition.

We may also note Rule 2 of the Rules of the Madras High Court, 1967, which is as under —

- "2. Every Election Petition shall be in the form of Original Petition, in the English Language and shall be verified in the manner provided for under the Code of Civil Procedure, 1908."

Clause (d) of Section 79 of the Act defines "electoral right" to mean the right of a person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election. Under Section 123 "corrupt practice" in so far it is relevant in the present case means "Bribery", that is to say—The receipt of, or agreement to receive, any gratification, whether as a motive or a reward by (any person whomsoever for himself or any other person)—(a) for voting or refrain from voting, or (b) inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature. The term gratification has been explained and it includes all forms of entertainment.

Exercise of undue influence is also deemed to be a corrupt practice. Under sub-section (2) of Section 123 "undue influence" means any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right.

Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices cause of action cannot be equated with the cause of action as is

normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter. If proved not only that the candidate suffers ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8A of the Act. It was for this purpose that proviso to sub-section (1) of Section 83 was inserted by Act 40 of 1961 (w.e.f. September 20, 1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the Rules.

It is contended by Mr. Bhandare that all the material facts have been stated in the election petition and that for lack of material particulars, the petition could not have been thrown out at the threshold. He said opportunity should have been given to the appellant to supply the material particulars. It is really of strange proposition to advance. Till the date of the impugned judgment, appellant had persisted that the petition did not lack material particulars and that the verification was in accordance with the Code and the affidavit in support of the corrupt practice in the form prescribed. Admittedly, the petition lacked material particulars, verification to the petition was not in accordance with the Code and the affidavit did not conform to the form prescribed. At the first opportunity, the respondent raised objection that the petition lacked both material facts and the material particulars and that the verification to the petition and the affidavit were not in accordance with law. This was repeated in the miscellaneous application (Original Application No. 298/98). In the counter affidavit and in the reply to the miscellaneous application, the appellant persisted in his stand and termed the objections raised by the respondent as irrelevant. It is not that the appellant did not have opportunity to correct his mistake which he could have easily done in the rejoinder filed by him to the counter affidavit of the respondent or even his reply to the miscellaneous

8A Disqualification on ground of corrupt practices.—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of the Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

application (O.A. No. 298/98). He had every opportunity even at that stage to supply the material particulars which admittedly were lacking and also to amend the verification and to file the affidavit in the form prescribed but for the reason best known to him, he failed to do so. The existence of material facts, material particulars, correct verification and the affidavit are relevant and important when the petition is based on the allegation of corrupt practice and in the absence of those, the Court has jurisdiction to dismiss the petition. High Court has undoubtedly the power to permit amendment of the petition for supply of better material particulars and also to require amendment of the verification and filing of the required affidavit but there is no duty cast on the High Court to direct suo moto the furnishing of better particulars and requiring amendment of petition for the purpose of verification and filing of proper affidavit in a matter of this kind the primary responsibility for furnishing full particulars of the alleged corrupt practices and to file a petition in full compliance with the provisions of law is on the petitioner. [See in this connection Constitution Bench decision in Bhikaji Keshav Joshi & Anr. vs. Brijlal Nandlal Biyani & Ors. (AIR 1955 SC 610 = (1955) 2 SCR 428(444)).]

Grievance of the appellant is that he wanted to meet the MLAs other than MLAs of the Congress party to which he belonged but those MLAs were kept first in Hotel Ashoka at Pondicherry and then taken to five star hotels at Mahabalipuram. Appellant alleged that MLAs were "kept" in Hotel Ashoka but he has not given particulars as to what he meant by the word "kept". "Kept" is certainly not "confined". What entertainment was provided to those MLAs in Hotel Ashoka, Pondicherry or in five star hotels in Mahabalipuram has also not been specified. It is not his case that he was prevented in any way from meeting any of those MLAs. It was a material fact to allege which he failed to do so. This is apart from the fact that the material particulars as to when the MLAs were taken to Hotel Ashoka and to other places, the names of the MLAs and names of the hotels in Mahabalipuram, who took them there, who paid their bills and who brought them back are lacking. Appellant does not show as to why he could not meet all those MLAs on October 2, 1997. Apart from one independent MLA other MLAs belonged to various other political parties like DMK, TMC, CFI, PMK and Janata Dal. Rather it can be assumed that the MLAs voted according to their political affiliations. It has come on record that out of total number of 29 MLAs who constituted Legislative Assembly of Pondicherry, two belonged to AIDMK, another political party, AIDMK had taken decision not to vote for any candidate and that is how the two MLAs of this party did not participate in the

election and total votes polled were 27. There was only one independent MLA and his casting of vote either way would not have at all affected the result of the election considering the number of votes polled by each of the candidates. It is not the case of the appellant that he was barred from meeting any of the MLAs in order to solicit their votes. There is no allegation if there is any complaint by any MLA that he was kept out of circulation by respondent or with his consent by any other person for the purpose of not being accessible to the appellant.

Appellant in his petition said that when C. Jayakumar, Minister and K. Kandasamy, Dy. Speaker and K. Rajasegaran, Parliamentary Secretary to the Chief Minister, were the agents of the respondent. He then alleged that C. Jayakumar took Kandasamy and Rajasegaran to Goa with a view to influence them to get their votes in favour of the respondent. It is not paradoxical where one agent influence the other agent to vote in a particular way? It certainly could not be a corrupt practice. Appellant then alleged that N. Kesav, MLA belonging to DMK and also a Government whip kept independent MLA Rajaraman first in Hotel Ashoka, Pondicherry and then took them to Kovalam, Chingleput District, then to Tirupathi in a Government vehicle and then brought back to Pondicherry on October 2, 1997. It is not the case of the appellant that N. Kesav did so with the consent of the respondent or any of his agent or otherwise. This is a material fact which the appellant failed to allege. Lastly, notification regarding appointments of Chairmen to various committees came out much later after the results were declared, it is correct that none of the nominees belonged to the Congress party.

It will be thus seen that election petition not only lacked the material facts, it lacked material particulars defective verification and the affidavit filed was not in the form prescribed. Moreover, ingredients of corrupt practices as defined in Section 123(1)(B) and 123(2) of the Act are also lacking. It is also not the case of the appellant that any MLA whom the appellant could not meet, received any gratification, as defined, whether as a motive or a reward for voting or refraining from voting, or there was any inducement or attempt to induce any such MLA to vote or refrain from voting. Also it is not the case of the appellant that any undue influence was exercised with the free exercise of any electoral right of any MLA which right, as noted above, has been defined in clause (d) of Section 79 of the Act. There is no allegation if any particular MLA was induced to vote or not to vote in a particular way because he was entertained or otherwise. The allegation is that appellant himself could not meet the MLAs and he believed if he had been given a chance to meet them he

would have influenced their vote in his favour and against their party of affiliations. There is no allegation that the MLAs were prevented or influenced from freely exercising their electoral right. As stated earlier appellant did not show as to why he could not meet the MLAs on October 2, 1997 when they were available in Pondicherry. Material fact must be that the appellant was prevented from meeting the MLAs which he did not allege and as to how he was so prevented would constitute material particulars.

The appeal is accordingly dismissed with costs.

Sd/-

CJI.

Sd/-

J.

(D. P. WADHWA)

Sd/-

J.

(S. RAJENDRA BABU)

New Delhi.

January 19, 2000.

[No. 82/CS-POND/1/98]

By Order, *

SHARAN PAL SINGH, Secy.

The election petition read as a whole did not disclose any cause of action or triable issue. Considering the facts of the case and the principles of law applicable, the election petition was rightly dismissed by the High Court in limine.

आदेश

नई दिल्ली, 9 अक्टूबर, 2000

आ.अ. 163.—यतः निर्वाचन आयोग का समाधान हो गया है कि सिक्किम विधान सभा के साधारण निर्वाचन, 1999 के लिए जो नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके मामले विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है,

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है :—

सारणी

क्र.सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1.	सिक्किम विधान सभा के लिए साधारण निर्वाचन, 1999	18—रहेनोक	श्री पदम धाकल पाचेखानी बेंगथांग सिक्किम ।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
2.	—वही—	20—पार्थिंग	श्री वेंजो डेले नामगयाल अपर अरिबांग मंगटोक सिक्किम ।	—वही—

[सं. 76/सिक्किम-वि. नं./2000]

आदेश से,

जी. एन. चाबला, सचिव

ORDER

New Delhi, the 9th October, 2000

O. N. 163.—WHEREAS, the Election Commission is satisfied that each contesting candidate specified in column (4) of the Table below at the General Election to the Sikkim Legislative Assembly held in 1999 from the Assembly Constituency as specified in column (3) against his/her name has failed to lodge an account of his/her election expenses or in the manner required by the law as shown in column (5) of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder ;

And whereas, the concerned candidate has either not furnished any reason/explanation for the said failure even after due notice and the election Commission after considering the representation, if any made by him/her is satisfied that he/she has no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10 A of the Representation of the People Act, 1951, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

S. No.	Particulars	S. No. & Name of Constituency	Name & Address of Candidates	Reason for Disqualification
1	2	3	4	5
1.	General Election to the Sikkim Legislative Assembly, 1999	18-Rhenock	Sh. Padam Dhakal Pacheykhani, Bengthang Sikkim	Failed to lodge any account of election expenses.
2.	-do-	20-Pathing	Sh. Penzo Delay Namgyal Upper Arithang, Gangtok, Sikkim.	-do-

[No. 76/SKM-LA/2000]

By Order,

B. N. CHAWLA, Secy.

आदेश

नई दिल्ली, 9 अक्टूबर, 2000

आ.अ. 164.—यतः निर्वाचन आयोग का समाधान हो गया है कि उड़ीसा विधान सभा के साधारण निर्वाचन, 2000 के लिए जो नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन सड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनियम बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में मर्यादित अपने निर्वाचन व्ययों का लेखा दाखिल करने में अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है,

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिये जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या व्याख्यान नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम, की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और हटाने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है :—

सारणी

क्र. सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरस्तता का कारण
1	2	3	4	5
1.	उड़ोसा विधान सभा के लिए साधारण निर्वाचन, 2000	23—पुकिटडा	श्री रवीन्द्र कुमार बसुडा गांव—चन्दिदा, पो.—गोबरघाटी, जिला—जाजपुर।	निर्वाचन व्यवस्था का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	—वही—	श्री मानजानुमार जेना गांव—मुलसारा, पोस्ट—रानीपाड़ा, जिला—जाजपुर।	—वही—
3.	—वही—	24—कोरई	श्री नारायण मोहन्ती पोस्ट—धनेश्वर, जिला—जाजपुर, गांव—सूत्यूजयपुर।	—वही—
4.	—वही—	26—धर्मसाला	जेख यूनस अली गांव—चौदपुर, पोस्ट—ब्रह्मबाराडा, थाना—धर्मसाला, जिला—जाजपुर।	—वही—
5.	—वही—	27—बरसाना	श्री ईश्वर परिदा गांव/पोस्ट—सोदिया, जिला—जाजपुर।	—वही—
6.	—वही—	49—बालीपटना	श्री बलमाली दलाई गांव/पोस्ट—बिसुनाबपुर, थाना—बालीपटना, जिला—खुर्द।	—वही—
7.	—वही—	—वही—	श्री सत्यप्रिया बहिरा गांव—बिलीपाड़ा, पोस्ट—बिनायकपुर, थाना—पिपली, जिला—पुरी।	—वही—
8.	—वही—	—वही—	श्री किशोर चन्द्र बेना गांव—भालपटना (अलुपटना), पोस्ट—सतपाड़ा, थाना—ब्रह्मगिरी, जिला—पुरी।	—वही—

1	2	3	4	5
9.	उड़ीसा विधान सभा के लिये साधारण निर्वाचन, 2000	52—पिपली	श्री नवीना बेहरा, स्थान पाडा साही पोस्ट/थाना—पिपली, जिला—पूरी।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहा।
10	—वही—	53—निमापारा (अ. जा.)	श्री बुलाराम उर्फ बुलिराम भोई, गांव/पोस्ट—महागा, वाया—निमाली, जिला—कटक।	—वही—
11	—वही—	56—पूरी	श्री महेश्वर माहान्ती स्था. —मारीचकोटा सेन, काचेरागली, पोस्ट—पूरी, थाना—पूरी टाउन, जिला—पूरी।	—वही—
12.	—वही—	80—मुनुपुर	श्री मोरमियो सबर गांव—पाटीली, पोस्ट—टोलोना, थाना—पुट्टासिनी, जिला—रायगढ़।	—वही—
13.	—वही—	128—सम्बलपुर	श्री रामकृष्ण महापात्रा स्था./पो.—बड़ा बाजार, जिला—सम्बलपुर, उड़ीसा।	विधि द्वारा अपेक्षित रीति के लेखा दाखिल करने में असफल रहे।

[च. 76/उड़ीसा-वि.स./2000]

आदेश से,

बी. एन. चावला, जजिफ

ORDER

New Delhi, the 9th October, 2000

O. N. 164.—WHEREAS, the Election Commission is satisfied that each contesting candidate specified in column (4) of the Table below at the General Election to the Orissa Legislative Assembly held in 2000 from the Assembly Constituency as specified in column (3) against his/her name has failed to lodge an account of his/her election expenses or in the manner required by the law as shown in column (5) of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder :

And whereas, the concerned candidate has either not furnished any reason/explanation for the said failure even after due notice and the Election Commission, after considering the representation, if any made by him/her is satisfied that he/she has no good reason or justification for the said failure :

Now, therefore, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/ Union Territory for a period of three years from the date of this order.

TABLE

S. No.	Particulars	S. No. & Name of Constituency	Name & Address of Candidates	Reason for Disqualification
1	2	3	4	5
1.	General Election to the Orissa Legislative Assembly, 2000	23-Sukinda	Sh. Rabindra Kumar Jamuda Vill : Chandia P.O. : Gobarghati Distt. Jajpur	Failed to lodge any account of election expenses.
2.	-do-	-do-	Sh. Manaja Kumar Jena Vill : Mulasara PO : Ranipada Distt. Jajpur	-do-
3.	-do-	24-Korei	Sh. Narayan Mohanty PO : Dhaneawar Distt. Jajpur Vill : Mrutyunjaysapur	-do-
4.	-do-	26-Dharmasala	Sh. Yunus Ali Vill Chandapur Post Brahmabarada P. S. Dharmasala Distt. Jajpur	-do-
5.	-do-	27-Barachana	Sh. Iswar Parida Vill/Post Saudia Distt. Jajpur	-do-
6.	-do-	49-Balipatna	Sh. Banmali Dalai Vill/P.O. Bisuanathpur PS Balipatna Distt. Khurda	-do-
7.	-do-	-do-	Sh. Satyapriya Behera Vill Bilipada P.O. Binayakpur PS Pipli Distt. Puri	-do-
8.	-do-	-do-	Sh. Kishore Chandra Jena Vill Aulpatna (Alupatna) P.O. Satapada PS Brahmagiri Distt. Puri	-do-
9.	-do-	52-Pipli	Sh. Nabina Behera At Pada Sahi PO/PS Pipli Distt. Puri	-do-
10.	-do-	53-Nimapara (SC)	Sh. Bularam Alias Buliram Bhoi Vill/PO. Pahanga Via Niali PS Niali Distt. Cuttack	-do-

1	2	3	4	5
11.	General Election to the Orissa Legislative Assembly, 2000	56-Puri	Sh. Maheswar Mohanty At Marichkota Lane Kacheragali, PO Puri, PS Puri Town Distt. Puri	Failed to lodged any account of election expenses.
12.	-do-	80-Gunupur	Sh. Jirmiyo Sabar Vill : Patili P. O. Tolona P. S. Pottasingi Distt. Rayagada	-do-
13.	-do-	128-Sambalpur	Sh. Ramkrishna Mahamand At/PO Badabazar Distt. Sambalpur Orissa.	Failed to lodged the account in the manner required by law.

[No. 76/OR-LA/2000]

By Order,

B. N. CHAWLA, Secy.

